

United States
Circuit Court of Appeals
For the Ninth Circuit

BLOOMFIELD RANCH, by JAMES A. CLAYTON & CO., a corporation, managing partner, operator and co-owner thereof, and by FLORENCE G. BALDWIN, JOHN DERROL CHACE, WILLIS SHERMAN CLAYTON, JR., ARTHUR D. CURTNER, JOHN KIRK DORRENCE, ROSE L. FITCH, MARGARET F. COYKENDALL, HUGH S. HERSMAN, ALFRED A. HAPGOOD, GEORGE H. OSEN, ALFRED L. PARKINSON, Estate of Andrew R. Patrick, deceased, by SIGURD C. P. CORNETT, as executor of the will of Andrew R. Patrick, deceased, SAN JOSE HARDWARE CO., a corporation, NELLIE SHILLINGSBURG, ANNE THOMPSON, SARAH SHILLINGSBURG BARRY, MARGARET LEAMAN, and Estate of Ellen Weinstein, deceased, by Wells Fargo Bank & Union Trust Co., Executor, substituted for Estate of Samuel Weinstein, deceased, by Ellen Weinstein, as executrix of the will of Samuel Weinstein, deceased, partners in and co-owners of Bloomfield Ranch,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the Tax Court
of the United States

PAUL P. O'BRIEN

United States Circuit Court of Appeals For the Ninth Circuit

BLOOMFIELD RANCH, by JAMES A. CLAYTON & CO., a corporation, managing partner, operator and co-owner thereof, and by FLORENCE G. BALDWIN, JOHN DERROL CHACE, WILLIS SHERMAN CLAYTON, JR., ARTHUR D. CURTNER, JOHN KIRK DORRENCE, ROSE L. FITCH, MARGARET F. COYKENDALL, HUGH S. HERSMAN, ALFRED A. HAPGOOD, GEORGE H. OSEN, ALFRED L. PARKINSON, Estate of Andrew R. Patrick, deceased, by SIGURD C. P. CORNETT, as executor of the will of Andrew R. Patrick, deceased, SAN JOSE HARDWARE CO., a corporation, NELLIE SHILLINGSBURG, ANNE THOMPSON, SARAH SHILLINGSBURG BARRY, MARGARET LEAMAN, and Estate of Ellen Weinstein, deceased, by Wells Fargo Bank & Union Trust Co., Executor, substituted for Estate of Samuel Weinstein, deceased, by Ellen Weinstein, as executrix of the will of Samuel Weinstein, deceased, partners in and co-owners of Bloomfield Ranch,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Taxpayer:

O. K. CUSHING,
EUSTACE CULLINAN,
DELGER TROWBRIDGE.

For Commissioner:

LEONARD A. MARCUSSEN.

In The Tax Court of the United States

Docket No. 5007

BLOOMFIELD RANCH, by JAMES A. CLAYTON & CO., a corporation, managing partner, operator, and co-owner thereof, and by FLORENCE G. BALDWIN, JOHN DERROL CHACE, WILLIS SHERMAN CLAYTON, JR., ARTHUR D. CURTNER, JOHN KIRK DORRANCE, ROSE L. FITCH, MARGARET F. COYKENDALL, HUGH S. HERSMAN, ALFRED A. HAPGOOD, GEORGE H. OSEN, ALFRED L. PARKINSON, ESTATE OF ANDREW R. PATRICK, deceased, by SIGURD C. P. CORNETT, as executor of the will of Andrew R. Patrick, deceased, SAN JOSE HARDWARE CO., a corporation, NELLIE SHILLINGSBURG, ANNE THOMPSON, SARAH SHILLINGSBURG BARRY, MARGARET LEAMAN, and ESTATE OF SAMUEL WEINSTEIN, deceased, by ELLEN WEINSTEIN, as executrix of the will of Samuel Weinstein, deceased, Partners in and co-owners of Bloomfield Ranch,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

See Order of 3/31/47—That the Estate of Ellen Weinstein, deceased, Wells Fargo Bank & Union Trust Co., Executor, be substituted in the place and stead of the Estate of Samuel Weinstein, deceased, by Ellen Weinstein, Executrix.

DOCKET ENTRIES

1944

- May 22—Petition received and filed. Taxpayer notified. Fee paid.
- May 23—Copy of petition served on General Counsel.
- May 22—Request for Circuit hearing in San Francisco filed by taxpayer. 5/29/44 Granted.
- June 30—Answer filed by General Counsel.
- July 4—Copy of answer served on taxpayer, San Francisco, California.

1945

- Feb. 10—Hearing set Apr. 23, 1945, San Francisco.
- Mar. 21—Hearing date changed to 7/9/45, San Francisco, Cal.
- July 10—Hearing had before Judge Harron on merits. Stipulation of facts filed at hearing. Briefs due 8/24/45; replies 9/8/45.
- Aug. 7—Transcript of hearing 7/10/45 filed.
- Aug. 20—Brief filed by taxpayer.
- Aug. 20—Findings of fact proposed by taxpayers filed.

1945

Aug. 21—Motion for extension to Sept. 24, 1945, to file brief filed by General Counsel. 8/22/45
Granted.

Sept. 24—Brief filed by General Counsel. Copy served 9/25/45.

Oct. 3—Motion for extension to 10/30/45 to file reply brief filed by taxpayer. 10/4/45
Granted.

Sept. 25—Copy of brief and proposed findings of fact served on General Counsel.

Oct. 29—Reply brief filed by taxpayer. 10/29/45
Copy served.

Oct. 31—Reply brief filed by General Counsel. Served 11/1/45.

1947

Jan. 31—Memorandum findings of fact and opinion rendered, Judge Harron. Decision will be entered for respondent. Served 2/3/47.

Jan. 31—Decision entered, Judge Harron, Div. 13.

Mar. 31—Stipulation to change the caption filed.

Mar. 31—Appearance by O. K. Cushing, Eustace Cullinan and Delger Trowbridge as counsel, filed, that Wells Fargo Bank & Union Trust Company, as Executor of the Will of Ellen Weinstein, deceased, appears as a party petitioner in this cause.

1945

Mar. 31—Order that the Estate of Ellen Weinstein, deceased, Wells Fargo Bank and Union Trust Company, Executor be substituted as the party petitioner in the above proceedings in the place and stead of the Estate of Samuel Weinstein, deceased, by Ellen Weinstein, Executrix, entered.

Apr. 21—Bond in the sum of \$21,650.00 approved and ordered filed.

Apr. 21—Petition for review by U. S. Circuit Court of Appeals for the Ninth Circuit filed by taxpayer.

Apr. 21—Proof of service of a copy of the petition for review filed.

Apr. 28—Designation of record filed by taxpayers.

May 5—Proof of service of designation of record filed.

May 7—Certified copy of a motion with order thereon from the Ninth Circuit directing Clerk of the Tax Court to transmit to the Circuit Court Petitioner's original exhibits 11 and 14 and Respondent's Exhibit E, fifteen days prior to argument on this case filed. [2*]

* Page numbering appearing at top of page of original certified Transcript.

[Title of Tax Court and Cause.]

PETITION

The above-named Bloomfield Ranch hereby petitions, by James A. Clayton & Co., a corporation, managing partner, operator, and co-owner thereof, and by Florence G. Baldwin, John Derrol Chace, also known as John D. Chace, Willis Sherman Clayton, Jr., also known as Willis S. Clayton, Jr., Arthur D. Curtner, also known as A. D. Curtner, John Kirk Dorrance, also known as John K. [3] Dorrance and as J. K. Dorrance, Rose L. Fitch, Margaret F. Coykendall, Hugh S. Hersman, also known as H. S. Hersman, Alfred A. Hapgood, also known as A. A. Hapgood, George H. Osen, Alfred L. Parkinson, also known as A. Leroy Parkinson, Sigurd C. P. Cornett, also known as S. C. Cornett, as executor of the will of Andrew R. Patrick, also known as A. R. Patrick, deceased, San Jose Hardware Co., a corporation, Nellie Shillingsburg, Anne Thompson, Sarah Shillingsburg Barry, formerly Sarah Shillingsburg, Margaret Leaman, and Ellen Weinstein, as executrix of the will of Samuel Weinstein, deceased, for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau Symbols: San Francisco Division IRA: 90:D ALW) dated February 28, 1944, and addressed to Bloomfield Ranch, and as a basis of this proceeding alleges as follows:

1. Petitioner, Bloomfield Ranch, is and during the period here involved was a partnership, as a

partnership is defined by section 3797 of the Internal Revenue Code and section 29.3797-4 of Regulations 111, or section 19.3797-4 of Regulations 103, and is a designation under which is carried the account for a group of persons hereinafter named who hold, as equitable co-tenants, in the name of M. E. Thomas, their agent, certain lands designated as Bloomfield Ranch, for the profitable resale thereof and for no other purpose.

The return for the period here involved was filed with the Collector for the First District of California.

The principal office of Bloomfield [4] Ranch is at the office of James A. Clayton & Co., 34 West Santa Clara Street, San Jose, California. Said lands, designated as Bloomfield Ranch, consisted during the year 1940 of 2,368 acres, more or less, of farm and cattle-range land lying within the Counties of Santa Clara, Santa Cruz, and San Benito in California.

The names of the members of said partnership so designated as the Bloomfield Ranch, and the co-owners of said lands, and equitable co-tenants thereof, and their respective undivided interests in said partnership and lands are:

Florence G. Baldwin, who owns a $1/14$ th interest,
John Derrol Chace, who owns a $1/14$ th interest,
Willis Sherman Clayton, Jr., who owns a $1/28$ th interest,

James A. Clayton & Co., a corporation, who owns a $3/28$ th interest,

Arthur D. Curtner, who owns a $3/28$ th interest,
John Kirk Dorrance, who owns a $1/14$ th interest,
Rose L. Fitch, who owns a $1/112$ th interest,
Margaret E. Coykendall, who owns a $1/112$ th interest,

Hugh S. Hersman, who owns a $1/14$ th interest,
Alfred A. Hapgood, who owns a $1/70$ th interest,
George H. Osen, who owns a $1/14$ th interest,
Alfred L. Parkinson, who owns a $5/56$ th interest,
Sigurd C. P. Cornett, as executor of the will of
Andrew R. Patrick, deceased, whose estate owns
a $1/14$ th interest, [5]

San Jose Hardware Co., a corporation, who owns
a $1/14$ th interest,

Nellie Shillingsburg, who owns a $2/70$ th interest
and a life estate in an additional $2/70$ th interest,

Anne Thompson, who owns a $2/210$ th interest,
subject to a life estate of Nellie Shillingsburg,

Sarah Shillingsburg Barry, who owns a $2/210$ th
interest, subject to a life estate of Nellie Shillings-
burg,

Margaret Leaman, who owns a $2/210$ th interest,
subject to a life estate of Nellie Shillingsburg,

Ellen Weinstein, as executrix of the will of
Samuel Weinstein, deceased, whose estate owns a
 $1/14$ th interest.

Sigurd C. P. Cornett was appointed executor of
the will of Andrew R. Patrick, deceased, in and
by the Superior Court of the State of California
in and for the County of Monterey.

Ellen Weinstein was appointed executrix of the
will of Samuel Weinstein, deceased, in and by the

Superior Court of the State of California in and for the City and County of San Francisco.

2. The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed to the petitioner [6] on February 28, 1944.

3. The taxes in controversy are income and declared value excess profits taxes for the calendar year 1940. The deficiencies asserted are \$6,646.60 income tax and \$4,159.58 declared value excess profits tax. The total amount of said deficiencies is in controversy.

4. The determination of taxes set forth in the said notice of deficiency is based upon the following errors:

(a) In determining the income tax of the petitioner, Bloomfield Ranch, the Commissioner erroneously determined that said petitioner was an association taxable as a corporation.

(b) In determining the declared value excess profits tax of petitioner, Bloomfield Ranch, the Commissioner erroneously determined that said petitioner was an association taxable as a corporation.

5. The facts upon which the petitioners rely as a basis of this proceeding are as follows:

(a) Petitioner Bloomfield Ranch is a partnership as defined in section 3797 (a) (2) of the Internal Revenue [7] Code and in section 29.3797-4 of Regulations 111, or section 19.3797-4 of Regulations 103, and has never been a corporation or an association within the meaning of section 3797 (a) (3) of the Internal Revenue Code, or within the

meaning of sections 29.3797-1 to 29.3797-4 of Regulations 111, or sections 19.3797-1 to 19.3797-4 of Regulations 103.

(b) Petitioner Bloomfield Ranch is not now and has never been a corporation.

(c) Petitioner Bloomfield Ranch has no officers and has no organization or representative management and it does not now and has never done business under the semblance of a corporation or of such an association as is included within the meaning of section 3797 (a) (3) of the Internal Revenue Code, or sections 29.3797-1 to 29.3797-4 of Regulations 111, or sections 19.3797-1 to 19.3797-4 of Regulations 103.

(d) James A. Clayton & Co., a corporation, is the managing partner and operator [8] and one of the co-owners of Bloomfield Ranch, but solely for the profitable resale of said land and the incidental upkeep of said land pending resale thereof. Petitioner Bloomfield Ranch is not and never was an enterprise for or engaged in the transaction of business generally or any activity except the profitable resale and incidental upkeep pending resale of certain definite lands acquired at the inception of the partnership and never increased or changed except by and through sales of parts thereof.

(e) The liability of the co-owners to persons dealing with Bloomfield Ranch through its managing partner and operator or otherwise has never been limited by agreement or otherwise.

(f) The petitioner Bloomfield Ranch does not now have and never has had capacity to enter into

contracts in its own name like an individual. Petitioner Bloomfield Ranch does not now have and [9] never has had capacity to take and hold and convey, or to take or hold or convey property in its own name like an individual, and it does not now have, and never has had, capacity to sue and be sued, or sue or be sued, in its own name like an individual.

(g) Petitioner Bloomfield Ranch has never been authorized to issue, and it never has issued, certificates of ownership.

(h) The method of filing returns as a co-partnership for petitioner Bloomfield Ranch has been approved by the Treasury Department with full knowledge of the facts for every year from and including 1926 up to the year here involved, to wit, 1940.

Wherefore, petitioners pray that this Court may hear the proceeding and determine that no deficiency is due from [10] petitioner Bloomfield Ranch for the calendar year 1940.

O. K. CUSHING,
EUSTACE CULLINAN,
DELGER TROWBRIDGE,
Counsel for Petitioners.

Of Counsel:

CUSHING & CUSHING, CULLINAN,
TROWBRIDGE & GORRILL,
#1 Montgomery Street
San Francisco 4, California. [11]

State of California,
County of Santa Clara—ss.

John Derroll Chace, Willis Sherman Clayton, Jr., Arthur D. Curtner, John Kirk Dorrance, Hugh S. Hersman, Alfred A. Hapgood, George H. Osen, Alfred L. Parkinson, Nellie Shillingsburg, Anne Thompson and Sarah Shillingsburg Barry, each being duly sworn, deposes and says:

That he is a partner in and co-owner of the petitioner Bloomfield Ranch, and makes this verification for petitioner Bloomfield Ranch, and for himself as a partner in and co-owner of Bloomfield Ranch; that he has read the foregoing, or had the same read to him, and is familiar with the statements contained therein, and that the facts stated therein are true, except as to those facts stated to be on information and belief, and those facts he believes to be true.

JOHN DERROLL CHACE,
WILLIS SHERMAN CLAY-
TON, JR.,
ARTHUR D. CURTNER, [12]
JOHN KIRK DORRANCE,
HUGH S. HERSMAN,
ALFRED A. HAPGOOD,
GEORGE H. OSEN,
ALFRED L. PARKINSON,
NELLIE SHILLINGSBURG,
ANNE THOMPSON,
SARAH SHILLINGSBURG
BARRY.

Subscribed and sworn to before me this 9th day of May, 1944.

[Seal] E. B. DONOVAN,

Notary Public in and for the County of Santa Clara, State of California. My commission expires: October 1, 1946. [13]

State of California,
County of Santa Clara—ss.

Frazier O. Reed, being duly sworn, deposes and says:

That he is the President of James A. Clayton & Co., a corporation; as such is authorized to verify the foregoing petition; that James A. Clayton & Co. is the managing partner, operator, and one of the co-owners of said Bloomfield Ranch; that he verifies the foregoing petition for Bloomfield Ranch and for James A. Clayton & Co., as such managing partner, operator and co-owner of Bloomfield Ranch; that he has read the foregoing petition and is familiar with the statements contained therein and that the facts stated therein are true, except as to those facts stated to be on information and belief, and those facts he believes to be true.

FRAZIER O. REED.

Subscribed and sworn to before me, this 9th day of May, 1944.

[Seal] E. B. DONOVAN,

Notary Public in and for the County of Santa Clara, State of California.

My commission expires: October 1, 1946. [14]

State of California,
County of Santa Clara—ss.

Warren L. Holmes, being duly sworn, deposes and says:

That he is the President of San Jose Hardware Co., a corporation; as such is authorized to verify the foregoing petition; that he verifies the foregoing petition for Bloomfield Ranch and for the San Jose Hardware Co. as a partner in and a co-owner of Bloomfield Ranch; that he has read the foregoing petition and is familiar with the statements contained therein and that the facts stated are true, except as to those facts stated to be on information and belief, and those facts he believes to be true.

WARREN L. HOLMES.

Subscribed and sworn to before me, this 9th day of May, 1944.

[Seal] E. B. DONOVAN,
Notary Public in and for the County of Santa Clara, State of California.

My commission expires: October 1, 1946. [15]

State of California,
County of Santa Clara—ss.

Ellen Weinstein, being duly sworn, deposes and says:

That she is the duly qualified and acting executrix of the will of Samuel Weinstein, deceased, and was appointed such by order of the Superior Court

of the State of California in and for the City and County of San Francisco; that she makes this verification for petitioner Bloomfield Ranch and for the estate of Samuel Weinstein, deceased, as a partner in and co-owner of said Bloomfield Ranch; that she has read the foregoing petition and is familiar with the statements contained therein and that the facts stated are true, except as to those facts stated to be on information and belief, and those facts she believes to be true.

ELLEN WEINSTEIN,

Executrix of the will of

Samuel Weinstein, deceased.

Subscribed and sworn to before me, this 9th day of May, 1944.

[Seal] E. B. DONOVAN,

Notary Public in and for the County of Santa Clara, State of California.

My commission expires: October 1, 1946. [16]

State of California,
County of Santa Clara—ss.

Sigurd C. P. Cornett, being first duly sworn, deposes and says:

That he is the duly qualified and acting executor of the will of Andrew R. Patrick, deceased, and was appointed as such by the Superior Court of the State of California in and for the County of Monterey; that he makes this verification for petitioner Bloomfield Ranch, and for the estate of Andrew

R. Patrick, deceased, as a partner in and co-owner of said Bloomfield Ranch; that he has read the foregoing petition and is familiar with the statements contained therein and that the facts stated therein are true, except as to those stated to be on information and belief, and those facts he believes to be true.

SIGURD C. P. CORNETT,

Executor of the will of Andrew R. Patrick, deceased.

Subscribed and sworn to before me, this 9th day of May, 1944.

[Seal]

E. B. DONOVAN,

Notary Public in and for the County of Santa Clara, State of California.

My commission expires: October 1, 1946. [17]

State of California,
County of Ventura—ss.

Florence G. Baldwin, being first duly sworn, deposes and says:

That she is a partner in and co-owner of the petitioner Bloomfield Ranch, and makes this verification for petitioner Bloomfield Ranch, and for herself as a partner in and co-owner of Bloomfield Ranch; that she has read the foregoing, and is familiar with the statements contained therein, and that the facts stated therein are true, except as to

those facts stated to be on information and belief, and those facts she believes to be true.

/s/ FLORENCE G. BALDWIN,

Subscribed and sworn to before me, this 11th day of May, 1944.

[Seal] MAUDE MARKILLIE,

Notary Public in and for the County of Ventura, State of California.

My commission expires: Feb. 5, 1947. [18]

State of California,

County of Santa Clara—ss.

Rose L. Fitch and Margaret F. Coykendall, each being duly sworn, deposes and says:

That she is a partner in and co-owner of the petitioner Bloomfield Ranch, and makes this verification for petitioner Bloomfield Ranch, and for herself as a partner in and co-owner of Bloomfield Ranch; that she has read the foregoing, or had the same read to her, and is familiar with the statements contained therein, and that the facts stated therein are true, except as to those facts stated to be on information and belief, and those facts she believes to be true.

/s/ ROSE L. FITCH,

/s/ MARGARET F. COYKENDALL.

Subscribed and sworn to before me, this 9th day of May, 1944.

[Seal] E. B. DONOVAN,

Notary Public in and for the County of Santa Clara, State of California.

My commission expires: October 1, 1946. [19]

State of California,
County of Los Angeles—ss.

Margaret Leaman, being first duly sworn, deposes and says:

That she is a partner in and co-owner of the petitioner Bloomfield Ranch, and makes this verification for petitioner Bloomfield Ranch, and for herself as a partner in and co-owner of Bloomfield Ranch; that she has read the foregoing, and is familiar with the statements contained therein, and that the facts stated therein are true, except as to those facts stated to be on information and belief, and those facts she believes to be true.

/s/ MARGARET LEAMAN,

Subscribed and sworn to before me, this 11th day of May, 1944.

[Seal] WILLIAM F. SHAFFER,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires: June 17, 1947. [20]

SN-IT-7

EXHIBIT A

Form 1279

[Seal] TREASURY DEPARTMENT, INTERNAL REVENUE SERVICE, 74 New Montgomery Street, San Francisco, 5, California.

Office of Internal Revenue Agent in Charge San Francisco Division. IRA:90-D. ALW.

Feb. 28, 1944

Bloomfield Ranch.

c/o James A. Clayton & Co.,
34 West Santa Clara Street,
San Jose, California.

Gentlemen:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1940 discloses a deficiency of \$6,646.60 and that the determination of your declared value excess-profits tax liability for the year mentioned discloses a deficiency of \$4,159.58 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United

States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco, 5, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

HAROLD N. GRAVES,
Acting Commissioner.

/s/ By F. M. HARLESS,
Internal Revenue Agent in
Charge.

RR

Enclosures:

Statement

Form of Waiver [21]

Statement

Bloomfield Ranch
 c/o James A. Clayton & Co.
 34 West Santa Clara Street
 San Jose, California

Tax Liability for the Taxable Year Ended
 December 31, 1940

	Liability	Assessed	Deficiency
Income Tax	\$6,646.60	None	\$6,646.60
Declared Value Excess- Profits Tax	4,159.58	None	4,159.58

This determination of your tax liability, is made on the basis of information on file in this office.

You filed a return on Form 1065 as a partnership. It is held that you are an association as defined in section 3797 (a) (3) of the Internal Revenue Code, and are therefore, subject to tax as a corporation.

Adjustments to Net Income

Net income as disclosed by return, Form 1065.....	\$31,512.01
No change is made in net income reported.	
Taxable Net Income	<hr/> \$31,512.01

Computation of Declared Value Excess-Profits Tax

Net income for declared values excess-profits tax computation	\$31,512.01
Less: Credit of 10% of value of capital stock. (No capital stock tax return for the year ended June 30, 1940 was filed).....	None
Amount subject to declared value excess-profits tax..	<u>\$31,512.01</u>
Amount taxable at 12% \$31,512.01 and tax.....	<u>\$ 3,781.44</u>
Total declared value excess-profits tax.....	\$ 3,781.44
Declared value excess-profits defense tax (10% of \$3,781.44)	<u>378.14</u>
Total declared value excess-profits and declared value excess-profits defense taxes assessable.....	\$ 4,159.58
Declared value excess-profits tax assessed.....	<u>None</u>
Deficiency of declared value excess-profits tax.....	\$ 4,159.58

Computation of Income Tax

Net income for declared value excess-profits tax.....	\$31,512.01
Less:	
Declared value excess-profits tax (cash basis).....	<u>None</u>
Normal tax net income.....	<u>\$31,512.01</u>
Income tax on \$25,000.00.....	\$ 3,775.00
Income tax on portion in excess of \$25,000.00— \$6,512.01 at 35%	<u>2,279.20</u>
Total income tax	\$ 6,054.20
Income defense tax:	
(If normal tax net income is less than \$31,964.30— \$377.50 plus 3.3% of income in excess of \$25,000.00) \$377.50 plus 3.3% of \$6,512.01.....	<u>592.40</u>
Total income and income defense taxes assessable....	\$ 6,646.60
Income tax assessed	<u>None</u>
Deficiency of income tax	\$ 6,646.60

[Endorsed]: Filed May 22, 1944. [23]

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioners, admits and denies as follows:

1. Admits that the return for the period here involved was filed with the Collector for the First District of California; admits that the principal office of Bloomfield Ranch is at the office of James A. Clayton & Co., 34 West Santa Clara Street, San Jose, California; and admits that the lands designated as Bloomfield Ranch lie within the counties of Santa Clara, Santa Cruz, and San Benito, in California; for lack of information and belief denies all other allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in paragraph 3 of the petition.

4. (a) and (b) Denies that the determination of taxes set forth in the notice of deficiency is based upon errors as alleged in paragraph 4 and subparagraphs (a) and (b) thereunder of the petition.

5. (a) to (h), inclusive. Denies the allegations contained in subparagraphs (a) to (h), inclusive, of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ J. P. WENCHEL, TMM
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

T. M. MATHER,
ARTHUR L. MURRAY,
Special Attorneys.
Bureau of Internal Revenue.

ALM/lis 6/22/44.

[Endorsed]: Received and filed June 30, 1944.

Before the Tax Court of the United States
Docket No. 5007.

In the Matter of

BLOOMFIELD RANCH, by JAMES A. CLAY-
TON & CO., a corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Before: Honorable MARIAN J. HARRON,
Judge.

Appearances:

Eustace Cullinan, Esq., and O. K. Cushing, Esq.,
1 Montgomery Street, San Francisco, California,
appearing on behalf of Bloomfield Ranch, by James
A. Clayton & Co., a Corporation, Petitioner.

Leonard A. Marcussen, Esq., (Honorable J. P.
Wenchel, Chief Counsel, Bureau of Internal Rev-
enue), appearing on behalf of the Commissioner of
Internal Revenue, Respondent. [29]

PROCEEDINGS

The Clerk: Docket No. 5007, Bloomfield Ranch,
by James A. Clayton & Co., a corporation.

Mr. Cullinan: Ready.

Mr. Marcussen: Ready for Respondent.

The Clerk: Will you state your appearances for the record.

Mr. Cullinan: Eustace Cullinan and O. K. Cushing of San Francisco, appearing for the Petitioner.

Mr. Marcussen: Leonard A. Marcussen appearing for the Respondent.

The Court: Will you proceed, Mr. Cullinan?

Mr. Cullinan: If the Court will indulge me, I will make rather a full opening statement. I think it will assist the Court and, perhaps, shorten the proceedings.

OPENING STATEMENT ON BEHALF OF THE PETITIONER

By Mr. Cullinan

Mr. Cullinan: This is a petition by members of a syndicate, or joint venture, as we call it, which is designated for convenience Bloomfield Ranch, and which we say, and expect to prove, is a partnership as that term is defined by Section 3797 of the Internal Revenue Code, that is to say it is an agent, or a syndicate, and not an association as that word is used in the Code definition of corporation. [30]

Now, the Commissioner viewing this group as a corporation has assessed for the taxable year 1940 a deficiency of \$6,646.50, plus a declared value excess profits tax deficiency of \$4,159.58.

Our petition asks that the Court determine that there is no deficiency.

There is no dispute about those amounts. If the Petitioner should be taxed as a corporation they

owe those amounts. If they are a partnership as defined by the statute they owe nothing.

The importance of this case to the Petitioners is that the decision here for 1940 will govern the tax liability for subsequent years.

Now, we do not expect much controversy over the facts. Many of the facts are admitted by the pleadings and others by a stipulation which will be presented at the beginning of the trial.

We have given the Commissioner and counsel complete access to all our records, and have permitted the government counsel to interrogate fully Mr. Frazier Reed, who will be our principal witness, in fact our sole witness.

With respect to those facts not admitted by answer or stipulation the Commissioner puts us on our proof not so much (at least we think so) because he has any doubt concerning the facts, but because he prefers to have them established [31] by our evidence. So the controversy is really not about what was done, but mainly, if not solely, as to whether what was done brings the Petitioners within the definition of a corporation as defined in the same Code Section.

It will, we think, clarify the issues and aid the Court if we state with some detail the facts which we expect to establish.

Now, in the early part of 1926 Miller & Lux, a great and very famous corporation, owned 21 separate parcels of land, substantially all ranches or ranch lands in the Counties of Santa Clara, San Benito and Santa Cruz, in California. The tracts

were widely scattered. The distance between the most northerly and the most southerly tract is about 14 miles, and between the most easterly and the most westerly tract about 13 miles.

The 21 ranches all designated generally Bloomfield Ranch, contain about 27, or did contain—we bought 27,500 acres. That is approximately equivalent to 43 square miles of land, consisting of lands suitable for various purposes, and including some swamp and overflowed lands and river bottoms, and land in but on the outskirts of the Town of Gilroy; about 42 acres included in the acreage at the outskirts of Gilroy out of the 27,500.

These properties, as I said, were called commonly and for convenience, the Bloomfield Ranch. Miller & Lux [32] operated the properties as one going concern on which it handled thousands of cattle, on which it raised most of the feed for those cattle, and on which it habitually employed approximately 200 men.

Now, it became known about the beginning of 1926 that these properties could be bought from Miller & Lux as a whole.

Now, James A. Clayton & Company is a California corporation, having its principal place of business in San Jose, California. It does business as a real estate agent and broker. Its business was founded by James A. Clayton in 1867. About 1880 a partnership was formed, consisting of James A. Clayton and his two sons, and thereafter the partnership did business as a real estate agent and broker until it was incorporated in 1903.

During all of that time, since 1867, the principal activity, first of Mr. Clayton, subsequently of the partnership, and since 1903 of the corporation, has been to act as agent for persons who wished to buy or sell real property.

The president of Clayton & Company is Mr. Frazier O. Reed, who will be a witness at the trial.

Now, Clayton & Company, having for very many years known about the Bloomfield Ranch lands, determined early in 1926, when they heard that the ranch could be bought, that they presented a favorable opportunity for purchase and [33] profitable resale, because while there were few available purchasers for the 27,500 acres as a whole of land of such very character, there was a very favorable market for selling the lands in separate parcels, which Miller & Lux did not care to do.

Now, Clayton & Company early in 1926 presented this opportunity to a number of its customers who would be willing to appoint Clayton & Company as their agent on a commission basis to buy and sell those properties. Clayton & Company advised each of those customers separately that if he would put up \$50,000 as one of thirteen others, including Clayton & Company itself, the properties could be acquired for approximately \$1,285,000, and that the balance of the purchase price above the \$700,000 to be put up by the fourteen investors could be borrowed.

Clayton & Company readily found thirteen customers willing to go into the investment, each putting up \$50,000, and in January and February

of 1926 Clayton & Company also contributed \$50,000. That made the fourteen.

The lands were acquired from Miller & Lux by three deeds—let me first say that all the money was contributed by the fourteen investors in January and February of 1926.

The lands were acquired from Miller & Lux by three deeds, each dated March 3, 1926, one for the land in each of the three counties. The sum of \$335,000 was borrowed from [34] the Bank of Italy, now the Bank of America. The other \$250,000 was borrowed from Miller & Lux. These two loans were secured by appropriate deeds of trust covering different parts of the Bloomfield Ranch, and those deeds of course were recorded March 10, 1926.

Now, the grantee named in the deeds was M. E. Thomas, who is a single woman, and who was then and still is employed by Clayton & Company. M. E. Thomas signed the notes to the lenders and, of course, signed the deeds of trust. Title was so taken in her name as a convenience. She never had any actual interest in the property.

Now, each of the investors, after he paid his \$50,000 to Clayton & Company, and after the purchase of the lands, received a receipt dated March 10, 1926, a copy of which will be presented in evidence. The receipt, so given to each investor separately, referred to James A. Clayton & Company as the operator, and provided that the operator was to use the \$50,000, together with other sums contributed by thirteen other persons referred to as investors, but not named, and other sums borrowed

or advanced by the operator in the purchase of the lands in question as described in those three deeds to M. E. Thomas.

We expect to show that when the respective receipts were issued the lands had already been acquired, as I have stated, so that all that remained to be done was to sell [35] those lands at a profit, and that was the purpose of the enterprise. The arrangement was confined to those particular lands. It was not to be an expanding or continuing venture. The receipts provided that the operator is to take and hold title to the properties originally in the name of M. E. Thomas, but may take such title in the name of any other person, or in its own name, and hold it, and this is the language of the receipt "For the profitable resale thereof."

The agreement provided that the operator might sell the properties, they might lease them for one season only, and might otherwise deal with the properties as the sole and absolute owners, subject to certain other restrictions which will appear in the document when introduced.

The operator was authorized to incur expenses out of the money received from sales or renting. The operator was to retain a commission of 5 per cent on the gross selling price of each parcel sold, and that is the only provision for commission in the receipt, as sales were made, and after payment of the expenses and the commission to return to the investor the whole or such part of the \$50,000, as, in the judgment of the operator, might be safely paid.

The receipt provided also that when all the properties have been sold and all the expenses and charges paid the remainder shall be divided equally among the investors, [36] their heirs and assigns. Each receipt provided that the respective investor shall be entitled to have an account rendered to him by the operator on demand, but not more often than once in sixty days. There was no limitation of the investor's liability expressed in the receipt.

Now, while each of these thirteen investors, other than Clayton & Company, received a separate copy of this receipt, which was signed by James A. Clayton & Company, and by the respective investors, the investors had no meeting before signing the writing, and some of them did not know who the others were. The investors received no other evidence of their investment at any time, and there was no other agreement with Clayton & Company, or between the investors, or among the investors themselves. There was no agreement signed by the investors with one another as such.

Now, when the lands were taken over from Miller & Lux, some parts of them were subject to existing leases and they were taken subject to those leases.

We shall show that the sole purpose of Clayton & Company and of those respective investors was to sell these lands as soon as possible and at a profit. Clayton & Company, however, informed the investors, and it was easily foreseen, that the sale of so large an amount of land could not be completed immediately. It was expedient, therefore, in order to keep the land clean and presentable for sale, [37]

and to earn some income while awaiting buyers, to execute leases of portions of the land for one season only. That, as I said, was provided in the receipts. No plan was made for operating the properties for gain, and no operation was contemplated beyond such that would be necessary for the proper care of the lands during the period between the purchase and the expected sales.

Now, the object of the agreement was to appoint an agent and define its duties for the purpose of profitable resale. Therefore, no provision was made for transfer of interests or limitation of liability or continuity of existence. The agency was expected to end when the property was sold and the proceeds accounted for. There was no plan to develop or subdivide the properties. Each purchaser was to select the part he wished to buy and it was then to be carved out of the whole.

The investors never organized in any way. They held no meeting, except that two or three times Clayton & Company called some of them together to consider income tax questions raised by the Bureau of Internal Revenue. The investors had no offices or directors; they had no office; they adopted no by-laws; had no seal, and kept no books except each investor's own books. No minutes were kept, no stock or other evidence of interest was issued, no vote was ever taken, no name was ever adopted. [38]

The investment was referred to by various names. The name "Bloomfield Ranch" was used by Clayton & Company in its income tax returns. No records or accounts of the investment as a separate

entity were kept. The only account was in Clayton & Company's books, and that was identical in form with the accounts of any other purchase-sale transaction, or any other client in the real estate business, showing on one side monies received by Clayton & Company, and on the other side monies paid out.

The interests of the investors were not intended to be and never were bartered, outside of transfers caused by deaths. In the nineteen years since 1926 eight transfers only of part interests have been made, and those between original investors, and these, as we shall show, were all for special reasons, either to others of the investors, or to relatives or business associates of the investors.

Now, your Honor is wondering what delayed us from 1926 in selling those lands.

Clayton & Company began selling the lands as soon as they were acquired. By the end of 1930 they had sold nearly 25,000 of the 27,500 acres, nearly 90 per cent, and had received on sales nearly one and a half million dollars. The exact amounts will be shown.

Now, the stock market crash of October, 1929, made itself felt in the sale of country lands during the year 1930. [39] So far as the Bloomfield Ranch was concerned, the effect became serious in 1931 and continued until 1943, as we shall show. Now, efforts to sell the land were continued to 1932, but were relaxed as they became ineffectual because efforts to press sales when there were no buyers at all and when there was no market would have pro-

duced a harmful effect later when the market should become active. Nevertheless, sales were made every time an opportunity to sell was found, and no reasonable offer was refused.

Of course, no one in 1931 thought that the depression so far as the sale of country lands was concerned would last twelve years. The effect of the depression was such that while, by the end of 1930 over 90 per cent of the acreage had been sold for nearly one and a half million dollars, as I have said, during the next ten years only 60 acres were sold and those for approximately \$22,000. In fact, the lands sold in those ten years were all sold for public purposes, for roads, or rights-of-way for public utility corporations which had a right to condemn.

Now, confronted with this situation Clayton & Company, as operator of the properties until sales could be made, had no resource except to operate or rent portions of the property suitable for farming in order to prevent them from deteriorating, and to avoid further loss.

Obviously, if the land were to be sold it had to be kept in good condition. That was done, but it was done, as we expect to show, as a maintenance and salvage operation. We shall show that there has been no deviation from the original plan to sell the properties as soon as possible, and no one has suggested a change, and there has been no change in the agreement.

The wait was longer than the investors expected, but the policy to sell the land at a profit was never

changed. The practice of renting lands when possible, and farming them when necessary while awaiting buyers was adopted from the first and never changed. It lasted longer because the depression came.

That is what happened, and that is all that happened. We hope to show that no part of the funds originally contributed by the investors, and no other money has been invested or re-invested to acquire other lands or property, and no exchange of property has ever been made. Sales were made only for money, and some capital was distributed to the investors on each sale, except small sales during the depression.

All monies that have come to the possession of Clayton & Company have been distributed to the investors as rapidly as possible. There has been no thought of extending the enterprise into new fields or activities.

We shall show that the project was nothing but a [41] partnership, as that is defined in the Internal Revenue Code, as I have stated. Now, that definition, of course, comprises more than the common law partnership. It includes groups or operations, lacking some of the characteristics of a common law partnership, such as responsibility of each member for the acts of the others.

We shall show that the Bloomfield Ranch did not operate in the ways of a corporation, did not do business as an association, as that word is used by the Code in the definition of a corporation. As your Honor knows, the word is used—the word “associa-

tion" appears both in the definition of a partnership and in the definition of an association in the Code. Now, we hope to show that they were not taxable as a corporation or as an association.

Now, so clearly as this is the case it seems to us, if the Court please, that the Bureau, with complete information, took the same view until about 1943, and advised the syndicate to file its returns on a partnership basis and accepted the turns as such.

Now, after the investors had paid to Clayton & Company the amounts of their investment, and had signed the respective receipts, and before the return for the Federal income tax was prepared for the year 1926, the late William F. Curry, an income tax accountant of San Jose, who was formerly connected with the Bureau, was sent to San Francisco by [42] Clayton & Company to discuss with the Office of the Bureau of Internal Revenue the nature of the enterprise, and to obtain advice as to the form of return to be filed.

As a result of several interviews with the Bureau he recommended to Clayton & Company to file returns on Form 1065. That is the partnership form.

The method of reporting income taxes that he recommended was adopted in 1926 and was followed thereafter to and including the return of 1943. A representative of the Bureau spent several days in Clayton & Company's office in 1930 examining the Bloomfield account and was supplied with all information that he required. During that year a representative of the Bureau, that is of the Office of the Internal Revenue Commissioner, questioned the base

price per acre of land sold as reported in the income tax return. In other words, the syndicate had bought the acreage as a whole for a fixed sum, and the Bureau wanted to establish a base price per acre. Now, the difficulty of that soon became apparent, and the Bureau and the taxpayer agreed upon a basis which was that on every sale 55.99 per cent should be deemed the cost, and 44.01 per cent should be deemed the profit. And they had the syndicate revise its partnership returns on that basis for the years 1930 and preceding, to 1926, and on the basis then adopted, as revised, all of the returns from that date to this have been based.

No other objection was ever made to the income tax returns that have been filed. The returns were all accepted by the Bureau until the return for 1940 came under examination.

Now, we expect to convince the Court from the facts to be proved, and the decisions to be cited in our briefs, that the Commissioner was right through the first eighteen years in regarding the Bloomfield Ranch as a partnership, and that he erred when in his ninety-day letter of March 6, 1944, he turned about and held that the Bloomfield Ranch should be taxed as a corporation.

We expect to establish with these facts and from the decisions that the Bloomfield Ranch is not a corporation, should not be taxed as such. but it comes well within the Code definition and the Code concept of "partnership," which is—I am reading now from the Code Section—"The term 'partnership' includes a syndicate, group, pool, joint ven-

ture, or other unincorporated association through or by means of which any business, financial operation or venture is carried on, and which is not within the meaning of this title a trust or estate, or a corporation, and the term 'partner' includes a member in such a syndicate, group, pool, joint venture, or organization."

The Court: I think that is a very complete statement, Mr. Cullinan, and I will ask counsel for the Respondent [44] to state what his position is.

OPENING STATEMENT ON BEHALF OF THE RESPONDENT

By Mr. Marcussen

Mr. Marcussen: If your Honor please, the Commissioner has determined that for the taxable year 1940 Respondent is an association within the meaning of Section 3797(a) of the Internal Revenue Code.

Before going into a discussion, however, of our position generally, I would like to make a few remarks with respect to comments made by counsel as to our previous dealings in developing the case.

In the first place, none of the facts, so far as I know, are admitted in the Answer. I think that that was an inadvertence on the part of counsel. All of the facts, the material facts have been denied. We have, however, entered into a stipulation which covers some of the facts, and I am at a loss to know exactly what counsel refers to when he said that we preferred to put Petitioner on his proof with respect to some points.

I want to say that the stipulation as originally presented by counsel was not acceptable to the Respondent and an agreement was made to eliminate certain elements from the petition or, rather, from the stipulation. And it was indicated at that time that the reason therefor was that we regarded them as not material. We have, however, stipulated [45] in the original stipulation everything we regarded as being material to the case. And I might say also that in view of our high estimation of counsel we were quite willing to do that, notwithstanding the fact that we had not indicated at that time what facts we would like to have stipulated. Counsel gave us assurance that those facts would be made available to us, and he has been very cooperative, and has made the facts available to us, and we were, therefore, quite content to develop the facts without an investigation but merely by means of conferences with counsel, and we are more or less agreed as to what items may be submitted in evidence and what items may not be submitted in evidence.

Mr. Cullinan: I may say, of course, I did not mean to bind counsel for the Commission by my statement that I did not think there was any dispute as to the facts. I still don't think there is going to be any dispute.

Mr. Marcussen: I might say that I quite agree with counsel. I don't think we will have much of a dispute as to any of the facts.

Now proceeding generally as to our position, it is the position of the Respondent that the taxpayer is an association under the Internal Revenue Code,

and also under the decision of the Supreme Court in *Morrissey vs. the Commissioner*, decided in 1935.

Now, the general tests as to what constitute an association, as I understand it, and as it was set forth by the Supreme Court in that case, is that, one, there must be actually an association, and I think we will show that an association does exist here, and, secondly, that the association was organized primarily for a business purpose, and I think there will be no dispute as to the facts with respect to that point, and, thirdly, that the association was operated primarily after the form and manner of a corporation.

Now, I think the Supreme Court laid down the salient features of the corporation in that case and stated that they consisted of the following: In the first place, a continuing entity throughout the business period. The Court in that case had a trust, and in this case we will attempt to show that there has in effect been a trust arrangement established between Clayton & Company, on the one hand, as operator, and with the investors, thirteen other investors and also Clayton & Company as an investor on the other hand.

The second item of corporate form which the Supreme Court referred to in the *Morrissey* case is the centralized management that is provided by an association. I think we will show here that centralized management was provided by Clayton & Company, a corporation, which was one of the investors in this association, and which was the manager. [47]

The third point referred to by the Supreme Court,

and which exists in this case, is continuity uninterrupted by death among the beneficial owners. We will show there was no interruption of the association's business activities throughout the entire period of its existence by reason of the death of any of the partners.

We will also show that the fourth point mentioned by the Supreme Court in the *Morrissey* case exists in this case, and that is that means existed for the transfer of the beneficial interests. While it is true that, I think, as I recall, the agreement itself makes no specific reference to transfer, the facts show that transfers did in fact take place, not only transfers which were occasioned by the death of some of the investors, but also transfers *inter vivos* from one investor to other parties. I think counsel has stated the only transfers made *inter vivos* were to other investors.

Mr. Cullinan: Yes. I corrected it afterwards in the statement.

Mr. Marcussen: That was an incorrect statement. There were other transfers to new parties. And I might say in passing, with respect to that point, that it should be borne in mind that the interest involved here is a rather substantial interest. I refer to the shares. They are \$50,000 shares. And it, I think, is quite clear from the [48] start that such sizable shares, interests, beneficial interests are not very readily transferable, but the fact was that all the transfers that were made were recognized by the operator under the trust agreement.

Lastly, the fifth point provided for by the Su-

preme Court in the Morrissey case was limitation of the personal liability of the participants. I think that there is no question but their liability in this case was limited. While there is again, I think, no specific reference in the trust agreement, I think it is quite clear that the legal consequences flowing from that agreement show that there is a limited liability.

Now, reference has been made by counsel to the fact that there have been no officers, that there have been no meetings, I believe, and numerous other things which were regarded by the Supreme Court in the Morrissey case and in other cases as mere formalities and not the salient features which must be present or, rather, which are not the usual features of a corporation.

And I might say also that I think there is an indication in the decisions that every one of the five points referred to by the Supreme Court in the Morrissey decision are not necessarily a prerequisite to a finding by the Court that a corporate form exists in a particular case.

I might say also merely briefly in passing that counsel has referred to what I regard as a far more lofty document than a mere receipt. He has referred to it as a receipt. It is actually a formal agreement which exists between the operator on the one hand and each one of the investors on the other. And it also refers to the fact that the property which was purchased was purchased and to be held in trust by the operator for the benefit of the beneficial owners.

But regardless of whether it is found that the

agreement constituted a trust it is submitted that whatever the agreement stands for it is sufficient to form the basis of corporate liability in this case.

I don't think there is any point in my going into further argument as to facts which may or which may not be adduced here at the hearing, so with that I will close my opening statement.

The Court: Very well. Will you call your witness, Mr. Cullinan:

Mr. Cullinan: Yes. I want to present a stipulation of facts first. I think it will be more in order. We have stipulated as to the facts so far as we could get together on them, and I present now, if the Court please, two signed copies of the stipulation.

Perhaps, I should read the stipulation.

The Court: Ordinarily we don't do that. I do read [50] it while I am listening to the evidence.

The stipulation is received and made part of the record. Are there any exhibits attached to the stipulation?

Mr. Cullinan: No, your Honor.

The Court: Are you going to offer it?

Mr. Cullinan: Well, the substance of the stipulation, I might say, has really been covered to a large extent in my opening statement, except that the stipulation contains a much fuller description of the varieties of land, and it contains the names of the original investors. I mention this, so that I am not going over all this stipulated ground with Mr. Reed, and your Honor may think there are gaps in the evidence unless you have some notion of what is in the stipulation.

It contains the names of the original investors, it contains a statement of every change that has been made in ownership from the beginning, and it contains the names and respective interests of the investors at present. It contains in more detail the statements that I have made with respect to the sales of land to and including 1940, and the statement of what occurred after the market crash of late October, 1929.

The Court: Are you going to offer any documents as exhibits?

Mr. Cullinan: I have a number of documents I am [51] going to offer.

The Court: During the course of the testimony?

Mr. Cullinan: During the course of the trial.

I would first, however, ask Mr. Marcussen to produce the original partnership return of 1940 of the Bloomfield Ranch.

Mr. Marcussen: If your Honor please, I was going to submit the return in evidence myself. If counsel wishes to submit it, that is quite all right.

The Court: Yes.

Mr. Cullinan: This is the original return, however, and in submitting it I would like leave to get the original back and substitute a copy at some later date.

The Court: I think it will be easier, Mr. Cullinan, if you have no objection, if Mr. Marcussen introduces that as Respondent's Exhibit "A". It is easier in connection with their getting photostats.

Mr. Cullinan: It is quite all right.

The Court: Do you want to offer it now?

Mr. Marcussen: Yes, I will offer it, your Honor.

The Court: All right, the return is received as Respondent's Exhibit "A".

Mr. Cullinan: Do you want to withdraw the original and I will supply the copy right now?

Mr. Marcussen: Very well. [52]

The Court: I expect you prefer substituting photostats, don't you?

Mr. Marcussen: Yes. The habit is, I understand, for a photostat to be substituted in Washington.

The Court: Yes. They have a procedure, Mr. Cullinan, of having these documents photostated in Washington.

A photostat copy of the return may be substituted for the original.

(The income tax return referred to was marked and received in evidence as Respondent's Exhibit "A".)

[Respondent's Exhibit "A" set out on pages 191 to 196.]

Mr. Cullinan: Mr. Reed, will you take the stand, please?

Mr. Marcussen: If your Honor please, for the record, I would just like to make a comment before we go on with Mr. Reed, that the return in this case was filed in the First District of California.

The Court: What was that?

Mr. Marcussen: I think the return shows, if you have it there, that it was filed before the Clerk of Internal Revenue in the First District of California.

The Court: All right.

Whereupon,

FRAZIER O. REED

called as a witness for and on behalf of the petitioner, [53] having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Give your name and address.

The Witness: Frazier, F-r-a-z-i-e-r, O. Reed, R-e-e-d.

By Mr. Cullinan:

Q. Mr. Reed, you are the President of Clayton & Company, are you not? A. I am.

Q. And you have been since when?

A. About 1916.

Q. And you were the active member of Clayton & Company that formed this group which we call the Bloomfield Syndicate, were you not?

A. Yes.

Q. How active were you in that connection?

A. Well, I did most of the work.

Q. Well, did you have any familiarity with the Miller & Lux lands, called the Bloomfield Ranch prior to 1926?

A. Yes. I have been in the real estate business a long time and have sold a lot of land in and around the Miller & Lux holdings in the three Counties. Therefore, I was quite familiar with the Miller & Lux holdings.

Q. How, when you, acting for Clayton & Com-

(Testimony of Frazier O. Reed.)

pany, formed [54] the opinion that the land could be bought for profitable re-investment, what did you do?

A. I talked with different men with whom I had been in the habit of forming syndicates and purchasing lands for resale, and I talked with not all of them at the beginning, but knew that I would be able to have enough to take over the land whenever we needed to do so. And then I began negotiating with Mr. Ficket, the then President of Miller & Lux, here in San Francisco. And then, oh, we negotiated probably for about a month, and if I remember correctly, we paid Miller & Lux a deposit of \$50,000 on January 28, 1926. That is easy to remember because that is my birthday.

Q. Mine also, I might say.

A. Is that so? Well!

Then I went about talking with other investors. In fact, after the transaction was known to the public, I was criticized considerably by a very good——

Mr. Marcussen (interposing): If your Honor please, I object to statements of that kind.

Mr. Cullinan: Yes.

Mr. Marcussen: They are entirely immaterial.

Mr. Cullinan: If you will confine your answer to the question, please, Mr. Reed.

Let me ask this:——

The Court (interposing): Perhaps, the witness has [55] forgotten exactly what the question was.

Why did you want to refer to that, why did you want to refer to the general criticism?

(Testimony of Frazier O. Reed.)

The Witness: Well, simply to show that——

Mr. Marcussen (interposing): May we have this off the record, your Honor?

The Court: No. I asked the question.

The Witness: Simply to show that it was not difficult to obtain customers to become syndicate members in the venture, and that the criticism I received was from other customers who we did not invite to participate.

The Court: Well, that would all be immaterial, I should think, anyway.

Would you pick up again with a question? A witness is bound to go beyond the scope of a question.

Mr. Cullinan: I am trying to avoid asking the witness about matters covered in the stipulation already, you see.

The Court: Well, I might say in connection with that that this stipulation is rather short. A good deal of what is covered by the stipulation was covered by your opening statement, and I would suggest that you feel free to go ahead without too much consideration of repetition. It isn't enough repetition for you to worry about.

Mr. Cullinan: Perhaps, you don't know the witness, [56] if the Court please.

The Court: Well, we will watch the witness.

The Witness: I am at a loss to know what he means.

The Court: Maybe he means you like to tell stories to us.

(Testimony of Frazier O. Reed.)

Q. (By Mr. Cullinan): Mr. Reed, to what extent did each of the investors know who the others were?

A. Well, some who were always in syndicates that we formed knew about the others, but there are some syndicate members who even at this date did not meet all of the other syndicate members. I am quite sure that Mr. Patrick died before any of the syndicate members knew him, had the pleasure of meeting him.

Q. Yes.

A. That holds true with other members of the syndicate.

Q. Now, with reference to March 3, 1926, when was the money collected from all fourteen of the investors?

A. Well, I do not recall whether it was all collected before the deeds were paid for. That is all revealed by that statement that we gave Mr. Marcussen.

Q. Yes.

A. But it was—I suspect it was before we paid for the deed. [57]

Q. Well, then, if you don't know that of your own knowledge we will prove it otherwise.

A. I can tell you in a minute if you want to wait (examining document). I think it was all paid in—before March 10th.

Q. Yes. Now, then, I show you a document purporting to bear the signatures of James A. Clayton & Company and J. P. Dorance, investor, dated

(Testimony of Frazier O. Reed.)

March 10, 1926, and I will just ask you to tell the Court what this document is.

That is the original (handing document to Mr. Marcussen).

A. (Examining document): This is the receipt issued by James A. Clayton & Company for the \$50,000 which Mr. Dorance had paid in the joint venture. While we had formed many syndicates before this, we had never——

Mr. Marcussen (interposing): If your Honor please, I object to that.

The Court: Go ahead, Mr. Reed.

The Witness: This is the first time we had ever had a written agreement. All syndicates formed prior to that were purely verbal, but because of the——

Mr. Marcussen (interposing): I object to that, your Honor, as being wholly immaterial.

Q. (By Mr. Cullinan): Just state what this document is.

A. I said it is the receipt which we issued to Mr. Dorance when he paid us the \$50,000 which was his share of the joint venture.

Q. Now, then, is it different in form from the receipts issued to each of the other thirteen, the other thirteen investors who went into this syndicate?

A. It is identical, the others are identical with this.

Mr. Cullinan: We offer in evidence the receipt issued March 10th to Mr. Dorance, if the Court

(Testimony of Frazier O. Reed.)

please, and ask that it be marked Petitioner's Exhibit No. 1.

The Court: Any objection?

Mr. Marcussen: No objection.

The Witness: This is the only agreement that Clayton & Company has with this syndicate member.

The Court: That is all right, you are going beyond—you are talking out of turn now.

That may be marked as Petitioner's Exhibit 1, and is received in evidence.

(The receipt referred to was marked and received in evidence as Petitioner's Exhibit No. 1.)

[Petitioner's Exhibit No. 1 set out on pages 167 to 170.]

The Witness: My reason for——

The Court: Just a moment now.

Mr. Cullinan: If the Court please, I have copies of that receipt, and Mr. Reed would like to keep it for his file. It is the only record he has. I am going to ask the [59] Court to permit us to withdraw the original receipt and substitute a copy.

I think you have seen the copies, haven't you?

Mr. Marcussen: I haven't seen the copies, but I have no objection to the submission of a copy, provided that there can be any correction for any inaccuracies we can find.

Mr. Cullinan: That is all right.

The Court: Subject to check by counsel for respondent a copy, a typewritten copy may be substituted for the original as Exhibit 1.

(Testimony of Frazier O. Reed.)

Mr. Cullinan: Yes. Thank you.

If the Court please, I will ask counsel for the Commission whether he is willing to stipulate that all the other receipts given to the different investors were identical in form except as to the name of the investor and the signature of the investor?

Mr. Marcussen: I shall be glad to stipulate to that if that is counsel's assurance.

Mr. Cullinan: Yes, I have all the originals here, but I am just trying to avoid loading the record with repetitions of the same document.

Q. (By Mr. Cullinan): Now, Mr. Reed, was any other document given to any other member of the original investors? A. No. [60]

Q. Was there any writing at any time other than these fourteen separate so-called receipts evidencing the transaction? A. No.

Q. Clayton & Company as one of the fourteen also signed, received and signed a similar receipt?

A. That is right.

Q. And put up its \$50,000 along with all the other investors in this group?

A. That is correct.

Q. Now we may as well clean up the matter of transfers while we are on the subject of receipts.

Were there any changes made in the group of investors of the ownership of the lands?

You will recall that the changes are specifically set forth in the stipulation. I am just asking for a "Yes" or "No" answer there. The details are all in the stipulation. A. Yes, sir.

(Testimony of Frazier O. Reed.)

Q. How were those changes evidenced?

A. Simply by an assignment from the original investor to another member of the syndicate.

Q. Now, you procured for me, did you not, a photostat copy of the documents, all the documents evidencing any assignment or change in ownership?

A. I did.

Q. And you brought me only one photostat, one set?

A. That is correct.

Q. That is because you had no time?

A. Shortness of time.

Mr. Cullinan: Now, if the Court please, I have asked Mr. Marcussen if he will allow us to introduce these photostats, and I will promise to supply him with other copies and ourselves too, because we have no copies either of these. We have the originals, but I would rather put in the photostats if there is no objection.

Mr. Marcussen: There is no objection so long as I may see the originals during the course of the trial, and if you will supply us with a copy later.

Mr. Cullinan: Yes, the originals are all here in front of me.

The Court: Are those the photostat copies of the other receipts?

Mr. Cullinan: They are the photostat copies of whatever documents there were evidencing a change of ownership from the original investors.

The Court: Oh, I see.

Mr. Cullinan: Except where the change of ownership was caused by death, and under the law

(Testimony of Frazier O. Reed.)

of succession where there was—in other words, through decrees of distribution [62] of the Court. The facts are recited in the stipulation, but they are not particularly material here. The changes to which counsel for the Commissioner attaches significance are the ones that were made by living investors.

The Court: Who, I suppose, sold their interests, that is, they made their assignments for a consideration?

Mr. Cullinan: Well, Mr. Reed can answer that. One of them, at least, sold; others were made for other reasons; some to relatives, and one merely to a corporation owned by the original investor. He preferred to keep his title in the name of a corporation.

The Court: Is that your understanding?

The Witness: Yes.

Mr. Marcussen: Counsel, don't they show right on their face they were sold for a consideration?

Mr. Cullinan: Well, some of them. Now, they may recite a consideration. I am just going to read them.

Mr. Marcussen: Yes.

Mr. Cullinan: For example, we offer this document with the handwriting on the top of it (I say this for identification) "Willis Sherman Clayton, Jr.", and is dated San Jose, California, April 30, 1941.

Perhaps, I had better read it because they are all very much the same. The first one I had better read to your Honor. [63]

(Testimony of Frazier O. Reed.)

It is attached to a copy of the original receipt to W. S. Clayton individually. He was one of the original investors. Now, then, he made the transfer which is noted in the stipulation, and this is the documentary evidence of that transfer and the form of it.

“San Jose, California, April 30, 1941.

“This is to acknowledge that Willis Sherman Clayton, Jr., is now the owner of one-half of the undivided one-fourteenth interest in and to the balance of the assets, both real and personal, belonging to the Miller & Lux Syndicate as evidenced by the receipt and agreement dated March 10, 1926, between James A. Clayton & Co. as operator and W. S. Clayton as investor, a copy of which is attached hereto and made a part hereof, the same having been distributed to him by the final decree of distribution in the Estate of Willis Sherman Clayton, deceased, dated April 15, 1941.”

That is signed by “James A. Clayton & Company, by Frazier Reed, President,” and underneath that on the same page appears the following:

“San Jose, California, April 30, 1941.

“I hereby acknowledge that one-half of the undivided one-fourteenth interest in and to the balance of the assets, both real and personal, of the foregoing syndicate was distributed to me by the final decree of distribution in the Estate of Willis Sherman Clayton, deceased, April 15, 1941.”

(Testimony of Frazier O. Reed.)

Signed "Willis Sherman Clayton, Jr.," and underneath that, still on the same page, this writing: "San Jose, California, April 30, 1941.

"The undersigned as operator named in said receipt and agreement hereby accepts notice of the foregoing assignment."

Signed "James A. Clayton & Company, by Frazier O. Reed, President."

Now, we would like to offer that as the petitioner's Exhibit No. 2, isn't it?

The Court: 2. That is received in evidence as Exhibit 2.

The parties have agreed that photostat copies may be substituted for the originals?

Mr. Cullinan: Yes, your Honor.

(The document referred to was marked and received in evidence as Petitioner's Exhibit No. 2.)

[Petitioner's Exhibit No. 2 set out on pages 172 to 176.]

Mr. Cullinan: Now, I have a document bearing at the top, and for identification "J. B. Clayton to Baldwin."

Q. (By Mr. Cullinan): Is that correct? [65]

A. That is right.

Mr. Cullinan: That recites—this is the photostat copy, of course.

Q. (By Mr. Cullinan): Who is J. B. Clayton? He was the J. B. Clayton referred to in the previous Exhibit No. 2, was he not?

(Testimony of Frazier O. Reed.)

A. He is a brother of Willis Sherman Clayton, Jr., and they are sons of W. S. Clayton, who is deceased.

Q. I see. And who was Olive Clayton?

A. J. B. Clayton's wife.

Mr. Cullinan: Now, this document reads as follows:—

The Court: Are you going to read all of these into the record, Mr. Cullinan?

Mr. Cullinan: I will not if your Honor doesn't want it.

The Court: I don't think you need to. The point is that there was evidence of some transfers. The transfers are described rather fully in the stipulation of facts, and these documents supplement what has been stipulated.

Mr. Cullinan: That is right.

The Court: I think you just take up the record, you just run up your record by reading those. I don't think it is necessary.

Mr. Cullinan: Well, I quite agree with your Honor.

The Court: If you want me to notice something special [66] about some of these I will read them. I usually get things better if I read them. If you want me to read some of those or look at a particular paragraph, just point it out to me.

Mr. Cullinan: Well, I am not so keen about having you read them, if the Court please, as I think counsel for the Commissioner is.

Shall I offer them separately or offer them as a bunch?

(Testimony of Frazier O. Reed.)

The Court: I would offer them one after another. Just identify each one by the name of the assignee.

Mr. Cullinan: As Petitioner's No. 3, if the Court please, I offer this document signed by J. B. Clayton and Olive Clayton, referring to a transfer to Florence G. Baldwin.

The Court: Without objection, that is received as Petitioner's Exhibit 3.

(The document referred to was marked and received in evidence as Petitioner's Exhibit No. 3.)

[Petitioner's Exhibit No. 3 set out on pages 172 to 173.]

Mr. Cullinan: And then as Commissioner's Exhibit No. 4, I offer a document signed by Florence G. Baldwin, dated June 9, 1941, transferring certain interests, which I will not stop to specify, to James A. Clayton & Co.

Mr. Marcussen: Is that Baldwin to Clayton, Mr. Cullinan?

Mr. Cullinan: That is Baldwin to Clayton & Co.

Mr. Marcussen: Yes. No objection.

The Court: Received in evidence as Exhibit 4.

(The document referred to was marked and received in evidence as Petitioner's Exhibit No. 4.)

[Petitioner's Exhibit No. 4 appears on pages 174 to 175.]

(Testimony of Frazier O. Reed.)

Mr. Marcussen: Now I offer in evidence as Petitioner's Exhibit 5 a document signed by George H. Osen, O-s-e-n, dated February 17, 1914, and referring to an assignment to himself and his son in joint tenancy, and containing a statement below of the ratification by George A. Osen, and a receipt of notice by Clayton & Company.

The Court: Received in evidence as Exhibit 5.

Mr. Marcussen: No objection.

(The document referred to was marked and received in evidence of Petitioner's Exhibit No. 5.)

[Petitioner's Exhibit No. 5 appears on pages 175 to 177.]

Mr. Cullinan: Now I offer in evidence as Plaintiff's Exhibit No. 6, Petitioner's Exhibit No. 6, a document signed by Thomas Scoble, dated December 13, 1927, containing an approval and confirmation by Alice G. Scoble, by Thomas Scoble, her attorney in fact, and a statement at the bottom by Arthur D. Curtner, that he agrees to comply with all of the terms and conditions contained in said receipts.

I offer this as Petitioner's Exhibit No. 6.

I would like to ask a question about that of the witness.

Mr. Marcussen: Very well. [68]

By Mr. Cullinan:

Q. Mr. Scoble was one of the original investors, was he not, Mr. Reed?

A. Yes, sir.

(Testimony of Frazier O. Reed.)

Q. And that transfer was made shortly after the 1927—not long after the inception of the project?

A. That is right.

Q. Why was that transfer made?

Mr. Marcussen: I object to that, your Honor.

The Court: State the ground of your objection.

Mr. Marcussen: Hearsay, being entirely immaterial.

The Court: I want you to state the grounds of your objection.

Mr. Marcussen: In the first place it is hearsay, and it is also immaterial as to why the transfer was made. This witness is not able to state that.

The Court: Will you answer that?

Mr. Cullinan: I think the witness may know why the transfer was made.

By Mr. Cullinan:

Q. Do you know why the transfer was made?

A. Yes, sir.

Mr. Marcussen: I still object to that, your Honor, as being entirely hearsay.

Mr. Cullinan: Our purpose is to show that these [69] transfers were made by reason of very special and particular circumstances in each case, such as death, or other pressing circumstances, and to establish clearly that the receipts were not traded on, or the interest traded on or bartered generally like stock of a corporation.

Mr. Marcussen: I object to that, your Honor.

The Court: Well, is there any other evidence than the testimony of this witness that could be offered to bring out the fact that you have in mind?

(Testimony of Frazier O. Reed.)

Mr. Cullinan: Well, I don't know that anybody knows any better than the witness on the stand because he had the discussions with Mr. Scoble, and it was through him that the exchange was facilitated.

The Court: Is that correct, Mr. Reed?

The Witness: That is right.

The Court: Objection overruled.

By Mr. Cullinan:

Q. What were the circumstances surrounding this transfer by Mr. Scoble?

A. Mr. Scoble, after he had paid us \$50,000 for a one-fourteenth interest in the Bloomfield syndicate, decided that as a result of our active selling that all land in California might be sold as easily, therefore, purchased a subdivision on the Russian River, and it didn't work the way that Bloomfield worked because we sold in the first [70] year, or less than a year, over \$600,000 of the property. And when he found himself in financial trouble he came to me and said that he would like to be really rid of the interest in Bloomfield.

Then it was that I got Mr. Curtner, another member, and Mr. Parkinson, another member of the syndicate, and Mr. Curtner's partner, Mr. Fitch, to purchase that interest from Mr. Scoble.

Mr. Marcussen: Now, if your Honor please, I object to all that as being not within the issues of the case. It is entirely immaterial what the motive for the transfer of any of the interests by the investors was, and, furthermore, it is clearly hearsay.

(Testimony of Frazier O. Reed.)

This witness isn't competent, it seems to me, to testify as to what the motive of one of the investors was in selling his share in the association.

I move that that be stricken from the record.

Mr. Cullinan: If the Court please, one of the positions taken by the government is that the syndicate did business as a corporation, and one of the evidences of that on which the government relies is that certain transfers were made of the original interests, and that is likened to sales of stock. And my purpose is to show that these sales were not made on the market, or to strangers, but they were all made under very special circumstances, and as must have happened with any syndicate of this kind which lasted from [71] 1926 to 1945.

Mr. Marcussen: Well, if your Honor please, I think that the special circumstances, or any special circumstances which may exist on the transfer of any of these interests are entirely immaterial.

Secondly, I am willing to stipulate that these shares were not listed on any stock exchange and were not traded on any exchange.

Mr. Cullinan: Well, that stipulation hardly goes to the root of the matter.

Mr. Marcussen: Well, that is the point you wish to bring out, Mr. Cullinan?

Mr. Cullinan: No.

The Court: No, I don't think so. The fact that we have the witness' testimony that there was a transfer by sale of Mr. Scoble's interest to three persons—is that right?

(Testimony of Frazier O. Reed.)

Mr. Cullinan: Two, one of whom was the original——

The Court: (interposing) Curtner, Parkinson and Fitch; isn't that three. Yes. And that testimony establishes that to be a fact.

The objection that the intent is immaterial, and that the witness is not competent to testify about the intent gives me some trouble. I think that the intent is material. The competency of the witness to testify about the transaction [72] has not been established, perhaps, as it should be in view of the fact that there is an objection.

Now, I think, Mr. Cullinan, you probably ought to cure that objection, as I think you can, because I think, apparently from Mr. Reed's testimony, he negotiated this transfer of interests. He testified that he obtained three persons who were willing to take over the interests of Mr. Scoble.

Mr. Cullinan: Yes.

The Court: I think it would be material to know something about that transaction. You may not have had this in mind, but I would like to know whether the interest of Mr. Scoble was sold at a very large profit or a nominal profit, or no profit, or at a loss. That is all involved in this argument of the Respondent, that these interests could be sold like a security.

Mr. Cullinan: Yes.

The Court: I think you should develop that a little more, if I may suggest that to you. For the present I will overrule the objection that has been made.

(Testimony of Frazier O. Reed.)

I think we should take a recess for just a minute for the Reporter.

(Short recess.)

By Mr. Cullinan:

Q. Mr. Reed, there was a transfer of an interest from [73] A. E. Holmes to the San Jose Hardware Company, was there not?

A. Yes.

Q. Will you recite the circumstances of that transfer?

A. The receipt was issued to Warren L. Holmes, and then he elected to transfer it to the San Jose Hardware Company, which was owned by him and his father. And then the San Jose Hardware Company was subsequently incorporated. You have orders there to show the assignments.

Mr. Cullinan: Now, if the Court please, we offer in evidence a document on the letterhead of the San Jose Hardware Company signed "San Jose Hardware Company, A. E. Holmes, President, and W. S. Holmes——" is it?

The Witness: W. L.

Mr. Cullinan (Continuing): "——W. L. Holmes, Secretary," attached to which is a letter—that is dated August 10, 1928, and attached to it a letter addressed to James A. Clayton & Company, dated October 17, 1928, and signed by W. L. Holmes. We ask that they be marked as Petitioner's Exhibit next in order.

The Court: 6.

(Testimony of Frazier O. Reed.)

Mr. Cullinan: No. 8 this will be.

The Clerk: 7.

The Court: Well, just a minute. The document that was offered as 6 may not have been received in evidence. There [74] was some question about it.

Mr. Marcussen: Is that the Scoble?

The Court: That is the Scoble.

Mr. Marcussen: I would like to call your attention, if your Honor please, to numerous other transfers that are attached to that which you probably want to put in evidence, introduce before you introduce this. You referred to Exhibit 6 as consisting only of a transfer of one-half interest to a man by the name of Curtner, I believe, and there are three other transfers on that exhibit.

Mr. Cullinan: Oh, the other exhibit, yes.

Will you hand me the last exhibit, please?

(The document was handed to Mr. Cullinan.)

Mr. Marcussen: The exhibit is identified, however, only as the transfer to Curtner.

Mr. Cullinan: Yes. Referring now to Petitioner's Exhibit 6, this is a group of transfers by Scoble, one to Arthur D. Curtner, one to Harry H. Fitch, and one to a LeRoy Parkinson, those three transfers, and they are all attached to a copy of the original receipt issued to Thomas Scoble. And at the bottom of that copy of the original receipt is a note in the handwriting of Mr. Reed: "This copy was surrendered by Thomas Scoble today to complete the transfer to Curtner, Fitch and Parkinson," dated "December 13, 1927." [75]

(Testimony of Frazier O. Reed.)

The three together cover the transfer concerning which Mr. Reed has testified.

Q. (By Mr. Cullinan): Now, who were these three people, Mr. Reed? Who was Arthur D. Curtner?

A. He was one, or is one of the original members of the syndicate. Mr. Parkinson is also one of the original members of the syndicate, and Mr. Fitch was the partner of Mr. Curtner and Mr. Osen, who are both members of the syndicate.

The Court: That is received as Exhibit 6.

Mr. Marcussen: No objection, your Honor.

(The documents referred to were marked and received in evidence as Petitioner's Exhibit No. 6.)

[Petitioner's Exhibit No. 6 appears on pages 177 to 181.]

Q. (By Mr. Cullinan): And you procured these men to take the Scoble interests over, did you not?

A. That is correct.

Mr. Cullinan: Now I offer in evidence, if the Court please, as Petitioner's Exhibit next in order, the two letters, one from the San Jose Hardware Company to Clayton & Company, and the other from W. L. Holmes to Clayton & Company, which I have already described.

Mr. Marcussen (Examining documents): No objection, your Honor. [76]

The Court: Received in evidence as Exhibit 7.

(Testimony of Frazier O. Reed.)

(The documents referred to were marked and received in evidence as Petitioner's Exhibit No. 7.)

[Petitioner's Exhibit No. 7 appears on pages 181 to 182.]

Q. (By Mr. Cullinan): You have told the story of that transaction, have you not? A. Yes.

Q. Yes. Now, then, I have a group of papers here dealing with the Shillingsburg and Hapgood transaction. What was that transaction?

A. We issued a receipt to Mr. Shillingsburg when he paid his \$50,000, and he signed the agreement, and it seems that he told Mr. Hapgood—

Mr. Marcussen (Interposing): If your Honor please, I object to hearsay of this type. He isn't qualified to state what one person told to another.

The Court: Well, Mr. Marcussen, I think, perhaps, these objections that you are making are technically correct, but it is very much like the objection of immateriality. I am going to overrule your objections. If the witness and if counsel for petitioner go too far afield you can move to strike, but I think that it is necessary to have the witness give us the story relating to these transactions. The petitioner should not be required in a case of this kind, I don't believe, to call in twenty or thirty witnesses merely [77] to overcome the objections of the kind that you are making.

Now, you made the objection before, and I want to get finished with the series of exhibits that peti-

(Testimony of Frazier O. Reed.)

tioner is offering. The fact is that transfers of interests were made. That is the material fact. Now, I am well acquainted with this type of case, and so are you, and the matter that you are objecting to really isn't very important. Now, your objection is overruled, and I am going to overrule the objections of that type right along. You can note your exceptions, if you wish to, and if the witness goes too far afield, then you can ask to have his answer stricken, and make any other argument that you want, but I think you will save time if you don't make that objection continuously.

Mr. Marcussen: Well, I don't want to impair or hinder the progress of the hearing, if your Honor please; but I do feel that if any of this testimony is material, then counsel should have brought the witnesses to testify, even if it involves thirty witnesses. I think it is that important.

The Court: Well, we will see how this shapes up, and you can probably do quite a bit on cross-examination for one thing, and you can also make any argument you want in your brief about the weight to be given the testimony of this witness. Under the circumstances, I think that is better for this witness to testify, and that these technical [78] objections should not be made right along. If you want to renew your objection each time, all right; but I don't want to discuss it any more.

Mr. Marcussen: Well, then, let the record show, if your Honor please, that, in order to expedite the trial, I will make now a blanket objection to all this

(Testimony of Frazier O. Reed.)

sort of testimony, and I won't repeat it from time to time, but I may make further motions from time to time to strike any of the testimony.

The Court: Will you read the last question, please.

(The pending question and partial answer were read by the reporter, as follows:)

“Question: Yes. Now, then, I have a group of papers here dealing with the Shillingsburg and Hapgood transaction. What was that transaction?

“Answer: We issued a receipt to Mr. Shillingsburg when he paid his \$50,000, and he signed the agreement, and it seems that he told Mr. Hapgood——”

The Court: All right, will you continue then, Mr. Reed?

A. (Continuing): ——who was associated as assistant to Mr. Shillingsburg, that he would let him participate to the extent of one-fifth of Mr. Shillingsburg's interest in the undivided fourteenth interest in the syndicate. [79]

Q. (By Mr. Cullinan): Let me interrupt here. How did you get that information?

A. Subsequently revealed. Mr. Shillingsburg was the agent for the Southern Pacific in San Jose, and Mr. Hapgood was his assistant. And he just wanted Mr. Hapgood to participate. We refused to recognize Mr. Hapgood and, in fact, insisted upon paying distributions from that ac-

(Testimony of Frazier O. Reed.)

count to Mr. Shillingsburg and not to Mr. Shillingsburg and Mr. Hapgood. And when Mr. Shillingsburg became quite ill and he was getting his affairs in shape, we yielded and then accounted to Mr. Hapgood for one-fifth of one-fourteenth, and to the Shillingsburg family for the remaining four-fifths of one-fourteenth.

Q. With respect to this or any of the transactions evidencing alterations in the ownership, do you know whether—I will withdraw that.

Relating back to the Scoble transaction, did Mr. Scoble received more or less than \$50,000 for the transfer of the interest?

A. The amount he received is set forth in the assignments themselves. He received slightly more. The amounts are in the transfer to each of the new parties.

Mr. Cullinan: Now, if the Court please, in connection with the Shillingsburg's transaction concerning which the witness has just testified, we offer first a letter addressed [80] to James A. Clayton & Company, signed by Mr. Shillingsburg, dated July 5, 1931, in which he says, without reading the whole thing: "Your records will show that for a one-fourteenth interest I pay to you \$40,000, and Mr. A. A. Hapgood \$10,000, and your disbursements have been on that basis. This is to instruct and request and urge that you change your account so as to show that Mr. Hapgood had one-fifth of one-fourteenth interest in the syndicate, and that you make further disbursements in accordance."

(Testimony of Frazier O. Reed.)

The Court: That should be offered separately, I believe.

Mr. Cullinan: Yes.

Mr. Marcussen: May I see that?

(Mr. Cullinan handed the document to Mr. Marcussen.)

Mr. Marcussen (Examining document): No objection.

The Court: It is received in evidence as Exhibit 8.

(The letter referred to was marked and received in evidence as Petitioner's Exhibit No. 8.)

[Petitioner's Exhibit No. 8 appears on pages 182 to 183.]

Mr. Cullinan: I am not, of course, reading these whole letters.

Then we offer in evidence a letter on the letter-head of Southern Pacific Company, dated August 14, 1931, addressed to Mr. Frazier O. Reed, President of James A. Clayton & Company, and signed A. A. Hapgood, and dealing with the same transaction. We offer that in evidence as [81] Petitioner's Exhibit next in order.

The Court: Received as Exhibit 9.

Mr. Marcussen: No objection.

(The letter referred to was marked and received in evidence as Petitioner's Exhibit No. 9.)

[Petitioner's Exhibit No. 9 appears on page 184.]

(Testimony of Frazier O. Reed.)

Mr. Cullinan: And finally we offer in this connection a document signed "E. Shillingsburg," dated May 28, 1926, reciting a consideration of \$10,000 as paid by Hapgood, bearing a postscript: "I hereby ratify, approve and confirm the foregoing sale and agreement," signed by "Nellie Shillingsburg," and underneath that another postscript saying: "I hereby agree to comply with all terms and conditions in the receipt," et cetera, signed by A. A. Hapgood. Attached to the sheet containing those is a copy of the original receipt of March 10, 1926, issued to E. Shillingsburg, and attached to that is another sheet signed by E. Shillingsburg, addressed to Clayton & Company, saying that "Clayton & Company is hereby requested to take notice that I have on this 26th day of May, 1926, sold, assigned and set over unto A. A. Hapgood an undivided one-fifth of all my right, title and interest to the receipt and agreement for \$50,000—" et cetera.

And we ask that that be offered as Petitioner's exhibit next in order.

The Court: Without objection, that is received as Exhibit 10. [82]

(The letter referred to was marked and received in evidence as Petitioner's Exhibit No. 10.)

[Petitioner's Exhibit No. 10 appears on pages 185 to 186.]

(Testimony of Frazier O. Reed.)

Q. (By Mr. Cullinan): Now, were there any other transfers other than by decrees of distribution of interests of the original investors in the syndicate?

A. Have you put in all the photostatic copies?

Q. I put in all the photostatic copies that I received from counsel which, I believe, are all the photostatic copies that we delivered to him, except one which doesn't appear to be significant now, and that is the Baldwin original receipt.

A. Oh. Yes.

Q. And the stipulation is that that receipt was in the same form as the Dorance receipt, which was introduced.

A. There were no other transfers.

Q. Now, did the investors in this syndicate, joint venture, as we call it, or agency arrangement, did they ever adopt a name? A. No.

Q. Did they ever have any meeting as such?

A. No.

Q. Did any group of them ever have meetings?

A. The only meetings I recall was one held when the Income Tax Department in 1930 sought to have a price, or a cost price fixed on each acre. At that time I got together [83] as many as were handy and discussed the matter to ascertain what we should do. Then when we received a notice in 1943 that the Income Tax Department was again asking that changes be made I called as many as I could get together, but there was never a meeting

(Testimony of Frazier O. Reed.)

at which all of the members of the syndicate were present. Those are the only two meetings I recall.

Q. And those were called for that specific purpose? A. And for no other.

Q. And was anything else discussed at those meetings respecting the management of the syndicate, or sales or prospects?

A. They were called solely to discuss the income matters. They may have all made some—asked some questions with regard to when they expected us to sell the balance of the land.

Q. Yes. Did you from time to time discuss the affairs of the syndicate with individual investors?

A. As we would meet I would talk with them, sometimes at the bank, sometimes hospital meetings, sometimes at even social events. You can understand that whenever a customer asks an agent a question that he is bound to reply. So over that many years I discussed matters with the members as we met, or as they asked me questions.

The Court: Of course, in part of your answer you [84] said whenever a customer discussed a matter with an agent he is bound to reply. Now, it will be understood that the witness' answers in so far as they involve conclusions relating to the issue in this case won't be binding on the Court.

Mr. Cullinan: That is so understood, of course.

The Court: Yes.

Q. (By Mr. Cullinan): I take it from your testimony that the investors never had an executive

(Testimony of Frazier O. Reed.)

or other committee appointed to deal with Clayton & Company in connection with this matter?

A. None.

Q. Do you know whether they ever took a vote, either at a meeting or otherwise on any question connected with the syndicate?

A. I do not recall any. I told you the only two meetings I recall was in connection with income tax matters.

Q. Well, I mean other than at meetings? For example, did they ever take a postal vote or a vote by letter? A. No.

Q. Did they ever interfere in any measure with the control of the operation of the syndicate by Clayton & Company, any one of them?

A. No.

Q. Or attempt to do so? [85] A. No.

Q. Were any documents or accounts kept by the syndicate? A. You mean as a syndicate?

Q. As a syndicate? A. No.

Q. Did they have any office, the syndicate?

A. No.

Q. As such, except Clayton & Company, of course?

A. They were always welcome at our office, but they had no office.

Q. Were there any files to the syndicate other than Clayton & Company's own business files?

A. No.

Mr. Cullinan: Now, I think you have one of these photostats, haven't you, Mr. Marcussen?

Mr. Marcussen: Yes, I do.

(Testimony of Frazier O. Reed.)

Q. (By Mr. Cullinan): I show you a photostat of a page evidently of account. The page is designated as 684 (and I am saying this only for identification) and headed "M. E. Thomas—Miller & Lux," and I will ask you to tell the Court what that is.

A. (Examining document) This is a copy of Page numbered 684 in Clayton & Company's ledger of a thousand bound pages, and it is the beginning of the syndicate account.

Q. That is the first page in Clayton & Company's ledger [86] dealing with the account of Clayton & Company with the syndicate, is it not?

A. That is right.

Q. Were all similar pages of the account throughout the years in identical form?

A. Exactly, except with regard to items and amounts.

Q. Yes. But I mean the form was the same?

A. Exactly.

Mr. Cullinan: We have an understanding with counsel, if the Court please, that it will be sufficient if we offer this photostat of the first page with the statement that it is typical of all the other pages. Counsel has been offered an opportunity to inspect the books, but since they are down in San Jose he is taking our word for that, and we give it. We have the assurance of Mr. Reed and his testimony, that all the other pages are identical, and we are introducing this to show the form in which the account was kept.

(Testimony of Frazier O. Reed.)

Mr. Marcussen: That is correct, if your Honor pleases. No objection.

Mr. Cullinan: Counsel already has copies.

Mr. Marcussen: By the way, I don't have them right now. I had them on this table. I wonder if those——

Mr. Cullinan (Interposing): I will be glad to give you one. We have a number of these (handing document). [87]

Mr. Marcussen: Thank you.

Mr. Cushing: Those are different pages.

Mr. Cullinan: Excuse me. I am stupid. Maybe I should make the offer in this form, and offer it all as one exhibit: Photostats of pages designated 684 to 691.

Q. (By Mr. Cullinan): Now, these cover the account for the whole year 1926, do they not?

A. (Examining documents) It goes to August 31, 1926.

Mr. Cullinan: Only to August, that is correct. So instead of offering the one page we will offer them all together as typical pages, and the testimony of the witness is that all subsequent pages were the same. I thought these were all one.

The Court: Without objection, the group of pages will be received as one exhibit, Exhibit 11. Let's see how many pages are there, Mr. Kassel.

The Clerk: Eight.

Mr. Cullinan: There are eight sheets.

The Court: Exhibit 11 consists of eight sheets. They are photostat copies of accounts.

(Testimony of Frazier O. Reed.)

Mr. Marcussen: No objection.

(The documents referred to were marked and received in evidence as Petitioner's Exhibit No. 11.) [88]

Q. (By Mr. Cullinan): Now, let me clarify this point: Those pages are headed "M. E. Thomas—Miller & Lux."

Are they the accounts of the Bloomfield Ranch?

A. That is correct.

Q. Why were your returns entitled the returns of the Bloomfield Ranch, whereas, the accounts were the accounts of M. E. Thomas—Miller & Lux?

A. Well, when we started the account on January 27, 1926, the bookkeeper, who made the entry, to distinguish the account, wrote the words "Miller & Lux" after the name of "M. E. Thomas."

We began advertising for sale the former lands of Miller & Lux, and Miller & Lux, who then owned probably a million acres of California and Nevada and Oregon, asked if we would refrain from using the name of Miller & Lux in our advertising, and we very gladly accommodated them because they were then and still are a going concern known as Miller & Lux, and we did not purchase the name or any part of it. We simply purchased the 27,500 acres of land from them. So when the time rolled around to file the partnership return for 1926, which was sometime in 1927, we had discontinued using the name of Miller & Lux, and thereafter we called it Bloomfield because that was the name

(Testimony of Frazier O. Reed.)

by which Mr. Henry Miller, who founded that great corporation, like to have that particular ranch called, ranch operation. You see, the lands extended into [89] three Counties there, and he went there as a butcher boy in 1854 and accumulated all those holdings. He was proud of them, and today even whenever you are going south of Gilroy you are going toward Bloomfield.

Q. Yes.

A. And I suspect the name will continue forever.

Q. In what respect, if any, did the account, typical pages which have just been introduced, the account of M. E. Thomas and Miller & Lux differ from the accounts of Clayton & Company kept with other clients? A. None.

Q. Now, is it a fact that the sole account, record of accounts of the Bloomfield Ranch syndicate was kept in the form of this Exhibit No. 9—is it?

The Clerk: 11.

Q. (By Mr. Cullinan) (Continuing): —11, and that there were no other records of the transactions of the Bloomfield syndicate kept by anybody?

A. That is correct, and that goes through several Clayton & Company ledgers because the ledger from which these pages were taken only lasts two or three years. We have to bring in a new one. So it runs through several ledgers, but identical always; no other record; just a debit and credit entry. Any money that we receive for that account

(Testimony of Frazier O. Reed.)

we credit to the account; any money that is paid out is charged to that account, and that is the only record we have ever had.

Q. It really is a cash account with receipts on one side and disbursements on the other?

A. That is correct, purely an agency account such as for any other customer.

Q. Now, Mr. Reed, it has been stipulated that Miller & Lux employed about 200 men on the property at the time when the Bloomfield Ranch was acquired in the name of M. E. Thomas. What staff did Clayton & Company maintain on those properties after the acquisition in March of 1926?

A. Mr. Frank Rice, who was Superintendent for Miller & Lux at Gilroy for many years, told me that they often employed as many as 200 men. We did not intend to operate it when we took over for the syndicate, and we, therefore, only kept one man, a Mr. Fitzgerald, who was acquainted with the locations of the various water pipe lines. The Miller & Lux concern had been handling, oh, several thousand head of cattle every year upon those ranches, and the operation had grown along with Mr. Miller's operations, and there were pipes scattered everywhere, underground pipes from springs, from wells, and from reservoirs, and we did not know and would not have known the locations of these for a long, long time if we had not taken over Mr. Fitzgerald. [91]

Q. And you paid him how much?

A. I think \$75 or \$80 a month.

(Testimony of Frazier O. Reed.)

Q. What other staff did Clayton and Company maintain in addition to Mr. Fitzgerald, if any?

A. Only Clayton & Company's staff; no staff at Bloomfield.

Q. Well, you don't mean that you employed extra help on account of the operation or maintenance of this ranch, do you? A. No.

Mr. Marcussen: I object to that as a leading question.

Mr. Cullinan: It is leading.

The Court: Objection overruled.

A. No; we went along in stride.

Q. (By Mr. Cullinan): Now, the stipulation accordingly shows that you undertook immediately a sales campaign, and the stipulation recites (I will not go into it now) the amounts of sale of each year to and including 1940.

When the land was acquired by Clayton & Company for the syndicate were any parts of it subject to lease? A. Yes.

Q. To what extent, just generally?

A. In 1926 we received \$34,041 from rents. [92]

Q. And those were of leases already existing, made by Miller & Lux prior to the sale to you, is that correct? A. That is right.

Q. The stipulation shows that Miller & Lux ran some thousands of cattle on the ranch. Did you—and by “you” I mean Clayton & Company or the syndicate, or you operating for the syndicate—did you run any cattle on the land at all?

A. Never at any time.

(Testimony of Frazier O. Reed.)

Q. Pending the making of sales was it necessary to do any farming or tilling or cultivating of the land? A. Yes.

Q. And why?

A. To keep the land clean because land in Santa Clara Valley, if you neglect it, will rapidly go native, and greasewood and weeds and brush, poison oak will all return.

Q. And did you cultivate the land, the unsold land while waiting for sales?

A. Yes, we did. And there is another reason there. We had \$30,000 worth of taxes to pay the first year.

Q. Did you rent any of the lands while awaiting sale? A. Yes.

Q. For what periods of time?

A. Prior to the depression for one year only. After the depression we violated the agreement and—— [93]

Q. (Interposing): My question now is confined to the period prior to the depression. I will come to the other later.

A. We did not rent any land prior to the depression for longer than one year.

Mr. Marcussen: May I ask what depression?

Mr. Cullinan: What?

Mr. Marcussen: May I ask which depression you are referring to?

The Witness: The one that followed the crash in 1929.

(Testimony of Frazier O. Reed.)

Mr. Cullinan: That is like asking the San Franciscan what earthquake he refers to. There may be several, but we talk of only one.

The Court: I would like to ask the witness a question there.

When you say you rented some of the lands for a year, do you mean by that that when you rented it you limited the length of the lease to one year?

The Witness: That is correct, usually from November 1 of this year to October 31 of next year, so that we would—the cropping seasons are—that is a usual cropping season.

The Court: And then you could renew that lease from year to year if you wanted to? [94]

The Witness: Yes.

Mr. Cullinan: And if the lands were not sold.

The Court: Yes. Did you renew some of those leases from year to year?

The Witness: Yes. The beginning leases I can't recall because we sold 25,000 acres in the first five years. We were moving tenants around at a rapid rate.

Q. (By Mr. Cullinan): What changes in the farming done on the land were made by Clayton & Company, if any, in the years from 1926 to, say, 1931, when the depression became felt, as the stipulation shows?

A. Well, when the price of wheat receded below the level which prevailed at the time of Shakespeare we discontinued growing wheat, as most every other farmer throughout the United States

(Testimony of Frazier O. Reed.)

did, and barley also, and then we went into truck farming, which accounts for the development of the wells.

Q. And what did you have to do in order to convert the farming operations that you were doing from wheat and barley to truck farming?

A. Well, we had to improve many of the wells that were on the property when it was purchased. We also installed new wells.

Q. Well, is irrigation necessary for wheat and barley [95] farming in that country?

A. No.

Q. Is it necessary for these other crops?

A. Yes.

Q. And can any other crops be raised by dry farming in the territory covered by Bloomfield Ranch? A. No, not profitably.

Q. Not profitably, of course? A. No, no.

Q. Now, then, it has been stipulated that the effects of the depression so far as the Bloomfield Ranch was concerned, took effect seriously in 1931.

A. That is revealed by——

Q. (Interposing): Yes. This is just part of my question. A. Oh!

Q. What, if any changes in the methods of farming the property were made after 1931?

A. None.

Q. None, except those to which you have testified?

A. The changes that were made after the crash of 1929, and when the prices of agricultural prop-

(Testimony of Frazier O. Reed.)

erties went so low in 1930 we improved the wells, as I stated, and put in other wells, and then continued that on a larger scale when we couldn't find purchasers for the remaining lands. We had [96] the remnants left after 1930.

Q. Now, how many acres did you have after 1940, approximately? A. After 1940?

Q. After 1940? No, I mean after 1931?

A. About—I have it here.

Q. The stipulation shows.

A. (Examining document): We made 15 sales in 1930 and sold 1702 acres. That left us with 2605 acres. I have left off the fractions there at the start of 1931.

Q. So from 1931 on——

A. That is less than 10 per cent of it.

Q. Yes.

A. Of the entire area that was purchased.

Q. And what you have testified to concerning farming operations subsequent to the depression relates only to those 2600 acres, does it not?

A. That is right.

Q. After the depression took effect what, if any, efforts were made to continue sales of the land?

A. We found it useless because no one had any courage, no confidence in the future. In 1932, to illustrate, we formed another syndicate and purchased 650 acres of full bearing apricot orchards at Brentwood in this State, which is a splendid apricot producing section, and we bought it [97] for \$100 an acre.

(Testimony of Frazier O. Reed.)

Mr. Cushing: That is a different thing.

Q. (By Mr. Cullinan): That is a different thing altogether.

A. I understand, but that goes to show how impossible it was to sell the remnants at Bloomfield after 1930.

Q. Exactly! But was there at any time, so far as you and the investors were concerned, any deviation from the original plan to sell the land as soon as possible at a profit?

A. No, none, because the syndicate was formed for the purpose of purchasing the land and selling it as soon as possible. The farming which was done was only incidental. It was done to pay taxes and to pay interest in the beginning.

Q. Was it done also to keep the land salable?

A. To keep it in condition to sell, and we did a splendid job, because to sell 25,000 acres in five years out of 27,500 acres is a good job in anybody's district. It is a record.

Q. Now, was any money of the syndicate ever invested in any other land or any other activity of any kind? A. Not a penny.

Q. Were any exchanges of property ever made of Bloomfield lands for any other lands?

A. No. [98]

Q. No other lands were ever taken in to the syndicate in any fashion?

A. That is correct.

Q. When distributions—well, let me first ask generally, and I will produce some tables after-

(Testimony of Frazier O. Reed.)

wards. But from time to time distributions were made to the investors, were they not, as money came in? A. That is correct.

Q. Was any distinction made in those distributions between capital returned and profits distributed?

A. Not upon the books of account. I don't recall any others. Whenever we had money on hand that we felt it was all right to return to the syndicate members we returned it.

Q. Was or was not the capital of the investors gradually returned right from the beginning?

A. We began distributing in 1928.

Q. Well, the account shows that?

A. Yes, sir, and continued right through the years. The last distribution was in 1944.

Q. Well, now, the stipulation shows that to and including 1940 some 224,889 acres had been sold for \$1,474,233. What was done with that \$1,474,233?

A. The first thing which was done was the repayment to the Bank of Italy of the \$335,000 which was borrowed from the Bank of Italy. Then we paid the \$250,000 which was [99] borrowed from Miller & Lux. In other words, I think in 1926 and 1927 from sales we paid off \$585,000 of principal, plus the interest.

Q. And the rest went to the investors, did it?

A. That is correct.

Q. I suppose you kept on hand some small amounts at all times?

(Testimony of Frazier O. Reed.)

A. Oh, the amounts have varied as revealed by this first account. One shows a credit of \$514,000, another balance at the end of the month showed a credit of \$56,000. At the end of April there was a credit of \$92,000, at the end of May, '26, \$15,444, and that is typical of the account from its inception to the present day.

Mr. Cullinan: Now, if the Court please, we have boiled down and submitted to counsel—they are willing to stipulate to what we produce now.

Q. (By Mr. Cullinan): I show you a sheet entitled on one side "Statement of Gross and Net Income from Farming and Rents, 1926 to 1940, inclusive, as shown by Bloomfield Ranch Partnership Returns of Income," and on the right hand side "Statement of Interest Received, Profits from Sale of Real Estate, Miscellaneous Items and Total Gross Income as shown by Bloomfield Ranch Partnership Returns of Income."

And I may state, if the Court please, that we have [100] compiled this in our office from our copies of the returns filed for all those years, and I would like to offer it in evidence with the consent of counsel as our Exhibit No.—

The Clerk: 12.

Mr. Cullinan: 12.

Mr. Marcussen: No objection.

Mr. Cullinan: And then I would like to tell the Court what it is, at least submit it to the Court for inspection.

The Court: Received in evidence.

(Testimony of Frazier O. Reed.)

(The document referred to was marked and received in evidence as Petitioner's Exhibit No. 12.)

[Petitioner's Exhibit No. 12 appears on pages 187 to 189.]

Mr. Cullinan: That, if the Court please, is what it purports to be. It shows all the receipts from rents, and all the receipts, mostly losses they were, from actual operations; the taxes paid, the receipts from sales, the receipts from interest (I have to ask the witness about that in a moment), from unpaid balances of sales, and the totals. And it shows, according to our theory, the net profits gained from sales in the course of those years, and the net profits gained from rents and operations.

Q. (By Mr. Cullinan): You are familiar with this, are you not, Mr. Reed? You have seen it?

A. Yes, sir. [101]

Q. There is an item here, which Mr. Marcussen and I have designated as column "C", of interest, showing a total of \$156,402.85 interest. What is that item? What interest is that?

A. That is interest received?

Q. From whom?

A. I say is that interest received?

Q. Interest received, yes. I will show it to you.

A. Well, in 1926 we received \$10,141.84.

Q. I am not asking you for the details. They all appear on this sheet. I am just asking you whether that is interest paid out or interest taken in?

(Testimony of Frazier O. Reed.)

A. Interest received, primarily from sales, unpaid balances on sales of real estate.

Q. You sold a good deal of the land on installments, did you not?

A. One-quarter cash, the balance deferred, and in those days we were getting interest at 7 per cent.

Q. Column "D" of this exhibit is a column entitled "Profits from Sale of Real Estate."

If counsel will permit me to lead the witness, because counsel and I have discussed this—that represents profit on sales of real estate computed according to the formula on which the syndicate and the Commissioner agreed in 1930, in other words, a division of 55.99 cost and 44.01 profit?

A. Correct.

Mr. Marcussen: In other words, that is the profit over the base that was agreed upon.

Mr. Cullinan: Yes. This is all taken from the returns, and that is the profit reported in the returns, and on that basis.

The Court: We will recess for lunch until 2:15 o'clock.

(Whereupon, at 1:45 p.m., a recess was taken until 2:15 p.m. of the same day.) [103]

Afternoon Session, 2:15 P.M.

The Court: We will now resume the hearing of the Bloomfield Ranch case.

Mr. Cullinan: Mr. Reed.

The Court: Mr. Reed, will you take the stand again?

Whereupon,

FRAZIER O. REED

resumed his testimony as follows:

Direct Examination

(Resumed)

By Mr. Cullinan:

Q. Mr. Reed, a question or two about Petitioner's Exhibit No. 12.

I observe that the farming operations through the years from 1926 to 1940, inclusive, were conducted at a loss, but that the renting operations were conducted at a profit.

Can you account for that?

A. I think to satisfy the Department that the expenses were charged against farming instead of against rents and they were not apportioned because it was not material, and not material now. If we had broken down the income from rents and set against it a portion of the cost of operations, it would have reduced the amount charged against the farming, but for taxation purposes it was unimportant. And I suspect that Mr. Curry and Mrs. Curry included them in the [104] income tax returns in that manner at the suggestion of the Examiners for the Income Tax Department.

Mr. Marcussen: I object to that, your Honor, as being entirely incompetent, and I think it should be stricken.

The Court: Objection overruled.

Q. (By Mr. Cullinan): Now, you said some-

(Testimony of Frazier O. Reed.)

thing about having to construct wells when you switched from dry farming to truck farming.

How many wells did Clayton & Company as operator build all together, if you know?

A. I don't know, but I think the statements that it was necessary to prepare a reply to some of Mr. Marcussen's inquiries before we came here reveals all of that. And you see none of these statements were put together, these figures were never put together until this income tax matter arose. And what I am looking at now is the result of questions that either Mr. Cullinan or Mr. Cushing or Mr. Marcussen asked.

Q. Well, to make it clear on the record, you have supplied Mr. Marcussen with a duplicate of that large yellow sheet that you hold in your hand, and that contains detailed information about farming, expenditures on the ranch in connection with operations for the whole period, does it not?

A. I didn't have that one in my hand, Mr. Cullinan. [105]

Q. Oh. A. Let me find this one here.

Q. Well, that is what you are referring to?

A. Yes, sir.

Q. I have a copy here.

A. This is the one from which that was made (indicating). Not all of these items that are shown on that statement which Mr. Marcussen has and which you apparently are getting out as wells means a new well. For instance——

(Testimony of Frazier O. Reed.)

Q. (Interposing): Well, let me interrupt. Mr. Marcussen will go into such detail as he wants. I am just asking a general question so as to lay the foundation for such cross-examination Mr. Marcussen wishes on the subject.

If you can't tell me how many new wells were built, can you tell me how much was spent on the construction of the wells?

A. No; it is all here together.

Q. What?

A. It is all here together. We have never separated it.

Q. Oh, you have not segregated it?

A. No. In other words, this sheet that you have there, Mr. Marcussen has, and I have here, represents all of the money spent over the 19 years for the items that are listed in the column on the left-hand side. [106]

Q. I see. A. That is a total figure.

Q. In other words, the number could be worked out? A. Yes, sir.

Q. But you haven't worked it out?

A. No.

Mr. Marcussen: Well, I might ask, if it is appropriate, my understanding with Mr. Reed and with Mr. Cullinan, as I recall, was that information would be supplied, the amount of the new investment put in by the operator since 1926.

And you state that that can be supplied, Mr. Reed?

(Testimony of Frazier O. Reed.)

The Witness: I think I can supply it from here, if you want to take the time.

Mr. Cullinan: You mean new investment? You don't mean new money?

Mr. Marcussen: No, I mean the new wells installed by Clayton & Company.

Mr. Cullinan: They are all on this yellow sheet.

The Witness: They are all here, everything, wells that have been improved, wells that have been repaired or replaced, or new wells built, are all on this sheet; everything.

Mr. Cullinan: We are not so much interested in that as the government is. We supplied the information. We [167] will supply anything further if we haven't supplied enough.

By Mr. Cullinan:

Q. Now, I show you a tabulation entitled "Investment and Sales," and ask you what this is, if you know?

Mr. Marcussen has seen a copy of it.

Maybe I can make an explanation, if the Court please, which will be acceptable to Mr. Marcussen.

This tabulation shows—the first part of it is material taken from the stipulation of facts, sales to and including 1940, \$1,474,243, and the source of the money, which has already been testified to, showing that the money expended in the purchase was \$1,285,000, and showing therefore a gain to and including 1940 or \$189,243.06, and then showing the amount of sales in each year subsequent to 1940. And this is the new material and it was supplied

(Testimony of Frazier O. Reed.)

by Mr. Reed: In 1941, in 1942, in 1943, and in 1944, which, added to the \$189,243.06, shows a total gain, that is, a total difference between the purchase price and the sales up to and including 1944 of \$541,843.06, and we added, after request of Mr. Marcussen, an item showing that one-fourteenth of that amount is \$38,703.07.

In other words, that is the gain on sales alone, and without including interest or rentals coming to each investor who put up \$50,000.

And I ask that that be admitted in evidence. [108]

Mr. Marcussen: No objection.

Mr. Cullinan: As Petitioner's Exhibit No. 13.

The Witness: I think I can see an error——

Mr. Cullinan: (Interposing): Wait a minute until we get this. I will ask you some questions about it then. This goes in by stipulation.

The Court: The schedule is received in evidence as Petitioner's Exhibit 13.

(The schedule referred to was marked and received in evidence as Petitioner's Exhibit No. 13.)

[Petitioner's Exhibit No. 13 appears on page 189.]

By Mr. Cullinan:

Q. Now, Mr. Reed, I will give you another copy of that so you can have it before you.

That would show gains based upon merely the difference between the monies paid for the land and the monies received from the land and regardless of

(Testimony of Frazier O. Reed.)

that arbitrary allocation as between cost and profit which you made and followed consistently throughout the returns; that is correct, is it not?

A. Check.

Mr. Cushing: Did he answer that?

Mr. Cullinan: You did answer that?

The Witness: Yes.

Q. (By Mr. Cullinan): That schedule shows that there were 1500 acres [109] remaining unsold. What is the value of those 1500 acres remaining unsold?

Well, first—withdraw that.

Will you describe the character of those 1500 acres, what sort of land they are?

A. Well, we have some very good land, we also have some worthless land. I broke those down here somewhere if I can find it, and this would be more accurate than my memory would be if I could find them.

You show on this statement about 1500 acres remaining to be sold, and my calculation from the Clayton & Company books reveals 1510.8491. I have carried it all the way out. Of that there are about 64 acres of tules, about 20 acres in the Llagas Creek, which is willows and creek bottom, a total of about 100 acres of swamp land, land that is very wet; some peat land, some of it is quite boggy. There are about 25 acres in the Uvas Creek, and that is comparable to the land that is in the Llagas-Creek, and there are about 240 acres in the bottom of the San Benito River, which is a sand river, dry

(Testimony of Frazier O. Reed.)

in the summer, and the only thing it grows is willows. It has no value at all. So of the 1510 acres remaining, about 449 acres are tules, creek bottom, swamp and river bottom.

Is that what you wanted?

Q. Yes. Now, what is the value of those remaining [110] 1500 acres?

A. Well, we had hoped to sell them for between two and three hundred thousand dollars. We sold three hundred and eighteen thousand dollars worth in 1944, but when we did that we topped the remaining lands, in other words, we sold the better of about 2200 acres.

Q. Well, what do you think you can sell these remaining 1500 acres for?

Mr. Marcussen: I object to that, your Honor, as being entirely immaterial.

The Court: Objection sustained.

A. Well, I——

The Court: (Interposing): The objection was sustained. That means you can't answer the question.

Q. (By Mr. Cullinan): I will now go back to the first form of my question, which I don't think, if I recall, was directly answered.

What is the value of the 1500 acres remaining?

A. Between two hundred and three hundred thousand dollars.

Mr. Cullinan: If the Court please, I have a map of the Bloomfield syndicate properties which it might be well to put in evidence for the information of the Court.

(Testimony of Frazier O. Reed.)

It shows the properties cut off into ranches by numbers, the acreage, the total acreage, and this is entitled [111] "Bloomfield Syndicate Map, showing the 21 ranches, comprising approximately 27,430 acres in Santa Clara, San Benito and Santa Cruz Counties, California, acquired by the Bloomfield Syndicate from Miller & Lux, Incorporated, in 1926."

It is dated "February, 1945. S. A. Herrmann, H-e-r-r-m-a-n-n, C. E."

Q. Was this map made under your direction?

A. Yes, sir.

Q. By Mr. Herrmann? A. Yes, sir.

Q. He is an old——

Mr. Marcussen: (Interposing): I have no objection to the introduction of that.

Mr. Cullinan: Well, then, we offer that.

The Court: It is received in evidence as Exhibit 14.

(The map referred to was marked and received in evidence as Petitioner's Exhibit No. 14.)

Q. (By Mr. Cullinan): I call your attention, Mr. Reed, to the statement on that map "Only Parcels Nos. 1 and 14, and a portion of Parcels Nos. 10 and 15 have been subdivided. The subdivided portions represent less than 6 per cent of the total area of the 21 ranches."

Is that statement correct? [112]

A. That is correct.

(Testimony of Frazier O. Reed.)

Q. As you sold the property off, how did you measure out the parts that you sold to the different buyers?

A. We surveyed all of the lands sold, and we did not have enough small——

Q. (Interposing) You are not answering my question.

My question is: Respecting the larger portions, did you have any subdivision map for the larger portions?

A. Oh, No. We sold those by *leaps* and bounds, surveyors' descriptions.

Q. A buyer would pick out what he wanted and then he would have it surveyed and sell it to him?

A. That is right.

Q. Now, you started to testify concerning some smaller portions.

A part of the Bloomfield acreage was actually within the town of Gilroy, was it not?

A. That is right.

Q. And had that been subdivided, a subdivision map of that been made prior to the acquisition of the land by your syndicate?

A. Yes. Miller & Lux subdivided some of the land into city lots, and the syndicate acquired those lots along with everything else that Miller & Lux owned. In fact, in the deed from Miller & Lux to M. E. Thomas there is a so-called [113] catch-all, or dragnet clause that took in everything that had ever been reserved by Miller & Lux and was not disclosed by the record, or, I mean, by the title company's

(Testimony of Frazier O. Reed.)

report of the record. So we took those lots along with the other properties.

Q. And did you find it necessary to subdivide some additional acreage in the neighborhood of Gilroy?

A. In the City of Gilroy we subdivided a substantial portion of the property which was inside the City of Gilroy, and not wanting to sell lots we sold blocks. I think we subdivided about six blocks, and if anyone wanted a part of a block we said, "Well, go and find some one or two or three people that will take the balance of the block, and we will sell you a whole block, but we will not sell portions of a block."

We did that because we wanted to keep away from the smaller and disturbing sales.

Q. When you say that you subdivided, as I understand, you mean you had a subdivision map prepared?

A. That is right.

Q. And why did you do that? Was that required by the law?

A. Yes, required by the law, and also so that we would not be cluttering the records of the county up with a lot of meets and bounds descriptions inside of a city. [114]

Q. You didn't lay out any sidewalks or curbs, or anything like that, did you?

A. No, none at all.

Q. You didn't do any improvement work?

A. No, none at all. The city later graded the streets and oiled them, and I don't think anything

(Testimony of Frazier O. Reed.)

more than that has been done, except some of the people who bought those lots got together and put in their own curbs and gutters, but we didn't spend any money for that purpose, not a penny.

Q. You did nothing but make a map?

A. That is all, and filed it for record for the convenience of selling, or, rather, describing the property when it was sold.

Mr. Cullinan: I think that is all.

The Court: You may cross-examine the witness, Mr. Marcussen.

Cross-Examination

By Mr. Marcussen:

Q. I think you stated earlier in your testimony, Mr. Reed, that Clayton & Company was instrumental in organizing Bloomfield Ranch Syndicate, is that right, as you have called it?

A. Yes, sir.

Q. And in going about the organization I think you [115] also testified that you talked to a number of people that Clayton & Company had done business with in prior years, or on other occasions, and interested them in the purchase of the property; is that correct?

A. That is correct.

Q. And when was the actual purchase of the property consummated? Was that prior to the time the agreement was signed on March 10, 1926?

A. Yes, sir.

Q. That Clayton & Company had purchased the property then?

(Testimony of Frazier O. Reed.)

A. No. As I told you, I personally had paid for the syndicate to Miller & Lux \$50,000 on January 28, 1926, which, as I said this morning, was my birthday.

At that time, if you will refer to your photostatic copy of the books of account of Clayton & Company, you will find that a substantial portion of that money had been paid in, I mean by that had been received by Clayton & Company.

Q. In other words, the arrangements had already been made sometime prior to the actual date of the agreement, is that correct?

A. Yes. The agreement was an after-thought.

Q. Did you issue any written statement at all to these people showing them the outline of the plans for the purchase of this property? [116]

A. No, but I talked with them about it.

Q. You talked with each one individually?

A. Yes, sir, and told them what I thought we would be able to sell it for, and the profit that we would be able to make.

Q. Yes. Now, I think you referred to the fact sometime in the course of your testimony that there never were any meetings except the two meetings you referred to, but that you did meet the individuals from time to time.

They were people that you knew?

A. Yes.

Q. And from time to time you were questioned by them as to the status of the operation, and I

(Testimony of Frazier O. Reed.)

presume that you gave them the information in answer to those requests, is that correct?

A. I did.

Q. Under those circumstances it was hardly necessary to call any meetings, was it?

A. Oh, when I would talk with one out of fourteen it didn't mean that I would talk the same thing with the other twelve.

Q. Yes, I realize.

A. Clayton & Company being one.

Q. But from time to time you had occasion to meet the various investors in this enterprise and you did discuss [117] the status of affairs with them, is that correct?

A. Oh, yes, over 19 years I talked with them many times.

Q. I suppose their inquiries would be more or less along the same line, what the prospects for further remittances and dividends from the enterprise were, is that correct?

A. That is very well put, yes.

Q. Now, then, I think you also stated that it was never necessary, or that the investors themselves never met together and took any vote on any matters nor took any part in the management, is that correct?

A. That is correct. I said that this morning, and that is my recollection of it.

Q. Now, the agreement itself, however, as you understand it, vested in Clayton & Company as the

(Testimony of Frazier O. Reed.)

operator full discretion with respect to the management of the enterprise, is that correct?

A. Yes, sir.

Q. Now, I think from time to time in the course of your testimony it has been brought out that Bloomfield Ranch consisted of a partnership, in effect?

A. Yes.

Q. And at other times you have stated that there was an agency? [118]

Actually Clayton & Company was one of the original investors, was it not?

A. That is right.

Q. And actually invested \$50,000 in the enterprise?

A. That is right, and signed one of those syndicate agreements along with the other thirteen members.

Q. Yes. Well, then, the agreement provides that Clayton & Company shall be the operator, so in any event Clayton & Company was not merely an agent of the other investors in this enterprise, were they?

A. Well, the sale of the land was in Clayton & Company's hands as agent and odd, but Clayton & Company did actually employ itself as one of the owners to be its agent. Now, that was done, and I can't see any objection to it.

Q. Well, then, Clayton & Company also was credited with \$50,000 for consummating the whole arrangement and organizing the syndicate, as you have called it, is that correct?

A. That is right.

(Testimony of Frazier O. Reed.)

The Court: What do you mean by Clayton & Company was credited with \$50,000?

The Witness: Commission.

Mr. Cullinan: The agreement provided for a commission to Clayton & Company of \$50,000 for the purchase of the whole Bloomfield Ranch.

Mr. Marcussen: I don't see that referred to in the actual agreement itself, Mr. Cullinan. Can you place your finger on that?

Mr. Cushing: Yes, it is.

Mr. Cullinan: It is in there.

Mr. Marcussen: In the agreement?

Mr. Cullinan: Yes.

Mr. Marcussen: Oh, yes, yes, I beg your pardon. I overlooked that and was unable to find it a moment ago.

It is provided in the agreement, pages 3 and 4 of the copies submitted in evidence: "It is authorized, understood and agreed, however, that the operator has charge and is entitled to a commission of \$50,000 for the negotiation, purchase and consummation of sale of said properties from Miller & Lux, Inc."

Q. (By Mr. Marcussen): Then in addition to that I think the agreement also provides that Clayton & Company is also entitled to a commission upon the sale of the properties, on the resale of the properties, I should say; is that correct?

A. That is right, 5 per cent on the sale.

Q. Now, is there any reference in there to any commission for the rentals? A. No.

(Testimony of Frazier O. Reed.)

Q. No reference to it, but——

A. (Interposing) I don't recall any. You have the [120] agreement before you there.

Mr. Cullinan: There is not.

The Witness: I don't recall.

Q. (By Mr. Marcussen): I don't see any, but at any rate, the fact is Clayton & Company also received 5 per cent commission on all the rentals; is that correct?

A. Not at the beginning, but when the depression thrust upon us the responsibility of carrying on when there were no sales—when we intended to liquidate, and sell, and clean up, we did not charge commissions, but when the responsibility of carrying on during the depression when no land anywhere was selling—we just felt that it was unreasonable for the syndicate members to expect us to do the work for nothing. The fact remains it is unprofitable for a real estate agent to operate land.

Q. Well, I take it that none of the investors made any complaint about this at all to you charging the commission, is that correct?

A. No, none has ever raised any complaint about our charging, but I can——

Q. (Interposing) I presume you concluded that it was reasonably implied from the agreement that any rentals would be subject to the usual 5 per cent commission?

Mr. Cullinan: I object to that upon the ground it is speculative and calls for the conclusion of the witness.

(Testimony of Frazier O. Reed.)

Mr. Marcussen: If your Honor please, this is cross-examination.

Mr. Cullinan: Well, even so.

The Court: The objection is sustained.

You can ask him why he did it, or what his reason was, if you want to.

Q. (By Mr. Marcussen): Well, I will ask that question, if you will state in your own words, Mr. Reed, why the commission was charged?

The Court: He has stated why the commission is charged. Do you want to tie up with this agreement? I would suggest that you reframe the question.

Mr. Marcussen: Strike the question.

Q. (By Mr. Marcussen): Now, referring to Exhibit 12, which has been already introduced in evidence, I want to call your attention to the column here showing rents between columns A and B, entitled rather not "rents," but commissions, and ask you whether those are the commissions referred to?

Mr. Cullinan: What is the question, counsel? I didn't hear it.

Mr. Marcussen: I am asking him whether those are the commissions that we are talking about. [122]

Q. (By Mr. Marcussen): That is on the rental of the property, I presume, and those commissions were paid to Clayton & Company, is that correct?

A. I noticed here—my answer is "Yes," if you will permit me to explain it.

Q. Surely.

(Testimony of Frazier O. Reed.)

A. We collected—in 1926 we collected \$34,041 in rents, and we have here commissions on rents \$1327.60.

My statement with regard to commissions a minute ago was wrong because we did take it. But in 1927——

Q. (Interposing): You mean you did take commissions from the beginning in 1926?

A. That is right, but in 1927, why the commissions on rentals were omitted from this statement I don't know.

Q. Were there commissions in that year also?

A. Yes. The rentals, rents received in 1927 were \$4842; no commission charged on my statement here.

Q. And in 1933 and 1935 I note that Exhibit 12——

A. (Interposing) I think that thereafter commission was charged each year.

Q. Yes. And apparently that is an omission on this statement, is it not?

A. Whether our bookkeepers forgot to charge the commission—I can hardly believe that. It doesn't show [123] in this statement.

Q. While I have Exhibit 12 here there are a couple of more——

The Court: (Interposing) Must we spend so much time on this item of those little rents? Don't you think you have covered that enough?

Mr. Marcussen: Yes, I have covered that, your Honor.

While I have Exhibit 12 here, I just want to call

(Testimony of Frazier O. Reed.)

attention to the statement here with the asterisks. I notice here a statement, other items herein, that there are wo asterisks, and I think that counsel informed me that there were some slight inaccuracies and differences between those two amounts, and the amounts appearing on the returns.

Is that correct?

Mr. Cushing: Yes, that is correct.

Q. (By Mr. Marcussen): But they are entirely immaterial? A. Yes, sir.

Q. I just wanted to explain what that was. Then I wanted to ask you also about the total figure that you see here in the right hand column, Mr. Reed. Is that the total of columns A, B, C, D and E as marked there?

A. (Examining document) Yes.

Q. And with respect to column E, it is headed "Miscellaneous."

Will you state what that consists of?

Mr. Cullinan: I didn't want to stop this cross-examination and object to it, but I want to remind counsel that that tabulation is just a statement. It is taken off the income tax returns. It was not prepared by the witness or, in fact, in the witness' office.

Mr. Marcussen: Well, I understood that the witness would be familiar with these items. I asked counsel, if you recall, what that item was.

Mr. Cullinan: Well, I think he is reasonably familiar with them.

Q. (By Mr. Marcussen): If you know?

(Testimony of Frazier O. Reed.)

Mr. Cullinan: But those are figures taken from the income tax returns.

Q. (By Mr. Marcussen): If you know, Mr. Reed?

A. I can check them out here for you.

Q. Well, I don't want to consume too much time on it. Do you have any idea at all what it is about, what it consists of? The amount is some three thousand dollars merely for 1926 and '27, and also for 1929, and about two thousand dollars for 1928.

The Court: I am going to suggest that you check [125] this later, if it is necessary. The item is very small. I can't see that it is important.

Mr. Marcussen: It amounts to some nineteen thousand dollars in total, your Honor, and I am interested primarily in the nature——

The Court: (Interposing) May I see that, please?

The Witness: That is over 19 years thought, isn't it?

Mr. Marcussen: (Interposing) I am interested primarily in the source of the income.

The Witness: Or fifteen years. I have the returns here.

Mr. Marcussen: Well, shall we stipulate? Would you stipulate to having an explanation of that go into the records?

Mr. Cullinan: Yes, that is quite all right.

Mr. Marcussen: If so, we can just pass it up at the present time.

The Court: We are now referring to Exhibit 12,

(Testimony of Frazier O. Reed.)

and this is a statement of monies received in connection with these lands, and Mr. Marcussen wants to know what these miscellaneous receipts were. Is that correct?

Mr. Marcussen: That is correct, your Honor.

The Court: Column E refers to miscellaneous receipts. [126]

Then a recess will be taken after the testimony of this witness is given and you will have an opportunity to check back on those figures before the conclusion of the hearing, but we won't take the time to do it now.

While you are preparing for the next question, let me ask Mr. Reed one question: What was the total purchase price of the 27,500 acres?

The Witness: \$1,235,000, to which we added \$50,000 commission on the purchase, which made \$1,285,000 to the syndicate.

The Court: That is what figured into your cost basis for tax purchases?

The Witness: Yes, that is the cost of the land to the syndicate.

The Court: Now, what was the total amount paid? Now, let me see—how many participants were there in the syndicate originally?

The Witness: Fourteen, including Clayton & Company.

The Court: Fourteen. And each one contributed \$50,000?

The Witness: Yes.

The Court: And that was \$700,000?

(Testimony of Frazier O. Reed.)

The Witness: That is correct.

The Court: Well, yes, Exhibit 13 does cover this. Thank you very much. [127]

The Witness: Yes, but I am remembering back 19 years now, so——

The Court: (Interposing) Very good.

By Mr. Marcussen:

Q. Mr. Reed, I am handing you this paper entitled "Bloomfield Ranch, 1940," bearing a statement, or, rather, a heading "Supplies Segregated," another heading "Labor Segregated," another heading "Segregation of Income," and I will ask you to state what that is, please?

A. (Examining document) This was supplied by Mrs. Curry, the accountant who had charge of the income taxes for the syndicate, in response to your request for these figures. You asked me the other day if we would supply you with that breakdown.

Q. Yes. And is that a breakdown of items which appear on the return of 1940 in Schedule 2 (handing document)?

A. (Examining document) Yes.

Mr. Marcussen: As a matter of fact, I think counsel will stipulate to that.

The Witness: Yes, it is. I just wanted to be sure.

Mr. Cullinan: These also were taken from the partnership returns?

Mr. Marcussen: Yes. I think counsel will stipulate that is a breakdown of those items appearing as [128] expense deductions in Schedule 2.

(Testimony of Frazier O. Reed.)

Mr. Cullinan: Wait a second. 1940?

The Witness: You asked me for those the other day, you know?

Mr. Marcussen: Yes.

Mr. Cullinan: I haven't got a copy of this. What were these prepared from?

Mr. Marcussen: These were submitted to me by Mr. Cushing several days ago.

Do you recall?

Mr. Cushing: Mr. Reed brought those in to you. You asked me to make copies of them.

Mr. Marcussen: Yes, that is correct.

The Court: We will go off the record for just a minute.

(Discussion off the record.)

Mr. Cullinan: Yes, that information was supplied to Mr. Marcussen by Mr. Reed. It is the material that Mr. Reed obtained from Mrs. Curry.

The Witness: That is correct.

Mr. Marcussen: That is a breakdown of item of supplies, a deduction of supplies contained in Schedule 2(c) of the 1940 return.

The Court: Mr. Marcussen, I can't follow you, and I am sure the Reporter isn't going to be able to get this [129] very clearly.

Whenever you ask any questions and when you have a document in your hand which is the basis of your question, will you please read into the record the number of the document that you hold?

Now, let's start in all over again.

(Testimony of Frazier O. Reed.)

Are you asking this witness a question or not, or are you trying to get something settled by an off-the-record conference?

Mr. Marcussen: Well, I will offer this in evidence, your Honor. I don't think that counsel will have any objection to it. I have already identified it merely as a statement.

The Court: Well, you haven't identified it for any purposes because this has been just a little bit more than I can follow.

Now, what you have? What are you talking about?

Mr. Marcussen: I would like to explain it again. I have here a statement entitled "Bloomfield Ranch," under that a date, "1940," and it bears three statements with the following titles above them: "Supplies Segregated," and another statement "Labor Segregated," and another statement "Segregation of Income," and it is merely an itemization of the gross income shown on the 1940 return of \$8,806.07.

The Court: May I see the two documents? I am not [130] sure I understand you.

(Mr. Marcussen handed the document to the Court.)

The Court: And the gross income that you refer to is the gross income reported on Respondent's Exhibit "A."

Now, what is the purpose of offering this schedule?

Mr. Marcussen: Merely to show the breakdown

(Testimony of Frazier O. Reed.)

of the income, as to what it is from, what the source of the income is, so as to reflect the activities of the organization.

The Court: Off the record, please.

(Discussion off the record.)

The Court: Well, I am going to take a recess.

(Short recess.)

The Court: Are you ready to go ahead, Mr. Marcussen?

Mr. Marcussen: Yes, your Honor.

I have here a piece of paper bearing the title "Breakdown of Gross Receipts, Supplies and Labor, Items appearing on the 1940 Return of Bloomfield Ranch."

And I believe that counsel will stipulate with me that this contains a breakdown of those items which appear on the 1940 partnership return, which was filed by the syndicate.

Mr. Cullinan: That is all right. It is the detailed explanation of three items in the 1940 return which Mrs. Curry supplied to Clayton & Company, and Mr. Reed supplied to Mr. Marcussen. [131]

By Mr. Marcussen:

Q. And, Mr. Reed, I would like to ask you: Is this item of supplies, the detail of which is on this exhibit, are those the supplies purchased for the operations of Bloomfield Ranch in the year 1940? Is that correct?

A. It must be. (Examining document). Fertilizers principally.

(Testimony of Frazier O. Reed.)

Mr. Marcussen: I offer that in evidence.

The Court: Well, that is received in evidence as Respondent's Exhibit "B."

(The document referred to was marked and received in evidence as Respondent's Exhibit "B.")

[Respondent's Exhibit "B" appears on pages 197 to 198.]

The Court: Mr. Marcussen, the net figure for income as shown on the return is eight thousand, what?

Mr. Marcussen: Well, that is the gross income, if your Honor please, from operations. It is \$8,806.07, and that is simply a statement of the detail of that item.

The Court: At the bottom of Exhibit "B" is a tabulation of income which totals \$8,806.07. Above that is a tabulation of costs of various kinds called "Labor, \$3,934.89."

Does that figure appear on the return?

Mr. Marcussen: Yes, it does, your Honor.

The Court: May I see the return?

(The document was handed to the Court.)

The Court: The figure appears in Schedule 2(c) of the [132] return, and Schedule 2(c) in the return gives the total cost of labor and supplies, and then on Exhibit "B" is another item "Supplies, \$4,023.11," and that figure also appears in Schedule 2(c) attached to the return, which is Respondent's Exhibit "A."

(Testimony of Frazier O. Reed.)

That will serve to tie in Exhibit "B" with Exhibit "A."

By Mr. Marcussen:

Q. Now, Mr. Reed, I think you testified that the expenses listed on Exhibit 12 were all taken and deducted from the income from actual operations by Bloomfield Ranch; is that correct?

A. That is right.

Q. And I think you also indicated (but I want to make it very clear now) that some of those expenses were allocable to the income received from rents, is that correct?

A. Well, I suspect in this column that—does this reflect taxes?

Mr. Cullinan: No. The taxes are separately stated.

The Witness: Well, let me look here a minute.

All of the expenses appear in column "A," because in Column "B" the only deduction there is commissions.

Q. (By Mr. Marcussen): Is for commissions. So that part of the expenses [133] which are set forth in the column here immediately preceding Column "A" are allocable to the renting operations, is that correct?

A. Well, you are asking——

Mr. Cullinan: If you know?

Q. (By Mr. Marcussen): If you know?

A. I don't because—may I explain why I say I don't know?

(Testimony of Frazier O. Reed.)

Q. Yes, indeed, particularly in view of your statement a moment ago on direct examination—I think you intimated at that time that some of that loss is applicable to the renting operations by reason of the fact that the expenses are allocable to the renting operations?

A. Well, I would like an opportunity to explain my position as a witness here in connection with this matter.

In 1926, as I told you, we sent Mr. Curry to San Francisco for the purpose of ascertaining how the Bloomfield Syndicate should file its income tax return. He ascertained, and we filed that way until 1930. In 1930 the matter was reviewed, and the percentage of cost, and the percentage of profit was determined, and after that we went forward without any interruption from the Department or any other source, and the income tax matters were left entirely to Mrs. Curry, who succeeded to her husband's business when he passed away. [134] And, as I said this morning, I suspect that the reason why many items of expense were included in expense and not elsewhere is because the different men from the Income Tax Department requested that it be done that way.

Now, we didn't set this up as a going concern. We purely set up Bloomfield to sell it out as quickly as we could sell it.

Q. I understand that, Mr. Reed.

A. Therefore, I am unable, and there isn't anyone else who is able to tell you why all of those

(Testimony of Frazier O. Reed.)

items were put under "Labor" and not apportioned. Now, if there be some apportionable to rents, then it has not been done, and why it has not been done I don't know, because we were not running a business. We were simply handling this account for the syndicate members as agent.

Mr. Marcussen: Very well, Mr. Reed.

I will ask counsel whether counsel will stipulate to this: that the items of expenses under the general heading "Farming" contained on Exhibit 12 are the sum total that appear on the various tax returns of Bloomfield Ranch for the years indicated? Is that correct?

Mr. Cullinan: That is correct.

Mr. Marcussen: And I think that it is also stipulated that generally the expense items for each year were quite the same, were they not? [135]

Mr. Cullinan: So I am informd, in fact that is the information I got from my conversation with Mr. Reed.

Mr. Marcussen: Yes.

Mr. Cullinan: In your presence.

Mr. Marcussen: Very well.

Mr. Cullinan: I would ask Mr. Reed that instead of stipulating to it. He is the one that knows it.

The Witness: If there would be any item that you want, Mr. Marcussen, it is all itemized here.

Mr. Cullinan: We are not making any objection, except in general that is the character of expenses, is it not, Mr. Reed?

(Testimony of Frazier O. Reed.)

The Witness: The amounts change.

Mr. Cullinan: Of course, but in general the character of the expenses?

The Witness: Yes, yes.

Mr. Cullinan: So stipulated.

Mr. Marcussen: Very well.

Q. (By Mr. Marcussen): And then under those circumstances it is not known, is it, whether or not the actual operations from farming resulted in a profit and loss; is that not correct?

A. That is correct.

Mr. Cullinan: And when you say "farming,"—I would like counsel to make that clear. [136]

He means farming exclusive of renting?

Mr. Marcussen: Yes, I mean the farming operations actually carried on by Bloomfield Ranch, not by tenants, on its farms?

The Witness: The losses charged up or profits charged up would not include losses or profits of tenants. They would be the syndicate losses and profits.

Mr. Cullinan: I think the point about it is this: there are two items, two lines in the return, one is rents and the other is income from business.

The result is the same so far as taxes is concerned?

The Witness: Exactly.

Mr. Marcussen: Now, then, I have here a statement entitled "Statement of Farming Expenses for 1927 to 1930, inclusive, and for 1937 as shown by Bloomfield Ranch Partnership Returns of In-

(Testimony of Frazier O. Reed.)

come," and I will ask counsel to stipulate that that is the detail appearing on the income tax returns for the years indicated, and that it may go into evidence.

Mr. Cullinan: Correct. So stipulated.

Mr. Marcussen: I offer this in evidence.

The Court: That is received as Respondent's Exhibit "C."

(The Return referred to was marked and received in evidence as Respondent's Exhibit "C.")

[Respondent's Exhibit "C" appears on pages 198-200.]

Mr. Marcussen: I have here also another statement entitled "Statement Showing Total Disbursements to Investors," and it has here a list of all the money that was paid to each investor on his investment in Bloomfield Ranch, giving the date of the payment, and showing a total of \$98,250, with a statement at the bottom reading: "Total Pay to 14 Units, \$1,375,500," the first payment being January 19, 1928, and the last one December 29, 1944, and I will ask counsel to stipulate that that may go into evidence.

Mr. Cullinan: So stipulated.

Mr. Marcussen: It also has a statement at the top "To each Unit of the Bloomfield Ranch there was returned the original capital invested, and the profits arising from sales, rents, and farming operations, and so forth, as follows—" and then in

(Testimony of Frazier O. Reed.)

parenthesis "Letter, Clayton & Company, May 31, 1945."

And I will ask counsel to identify the letter as being a letter written by Mr. Reed to counsel; is that correct?

Mr. Cullinan: That is correct.

Mr. Marcussen: I offer this in evidence, if your Honor please.

The Court: Without objection that is received as Respondent's Exhibit "D."

(The document referred to was marked and received in evidence as Respondent's Exhibit "D.")

[Respondent's Exhibit "D" appears on pages 200-202.] [138]

Mr. Marcussen: Now, then, I have here a tabulation with numerous columns for each year from 1926 to 1944, and down at the side a list by years, also showing new pumping plants, fences, buildings, wells, pipe lines, and other items, together with repairs covering the same items mentioned, which has been submitted to me by counsel for the petitioner.

I would like to offer that in evidence.

Mr. Cushing: Did you say new pumping plant?

Mr. Marcussen: Both new and repairs.

Mr. Cullinan: And replacements.

Mr. Marcussen: And replacements.

Mr. Cullinan: That information, for what it appears to be, we concede it was supplied by Mr.

(Testimony of Frazier O. Reed.)

Reed, and we have no objection to its being introduced in evidence.

Mr. Marcussen: I would like to introduce that in evidence.

The Court: Received as Exhibit "E."

(The document referred to was marked Respondent's Exhibit "E" and received in evidence.)

Q. (By Mr. Marcussen): Now I hand you, Mr. Reed, Respondent's Exhibit "E" and ask you to look at it as I would like to ask you some questions about the items there.

Was that statement prepared under your direction? [139]

A. (Addressing the Court) I just said to your Honor that I am proud of it, I prepared it myself Sunday.

Q. Very fine.

A. Because I didn't have time to get it to you before that.

Q. Very well. You have a copy of it with you?

A. (Continuing) Coming to trial on Monday.

Q. You have a copy of it with you?

A. Yes. You may have that. That is a duplicate of this (indicating).

Q. Now, as I understand it, there were some wells and properties, improvements, I should say, already on the property that was purchased, is that correct? A. That is correct.

Q. And are they set forth under the year 1926 here? A. No; only one is.

(Testimony of Frazier O. Reed.)

Q. Well, the first item here is "Frame warehouse" for "\$10,000."

That was already on the property at the time it was purchased? A. That is right.

Q. Then there are "two frame buildings, \$20,000."

A. Now, let me explain, if you will, that one, two, sixteen and seventeen are purely work sheet reference numbers. They do not mean two frame buildings, or sixteen [140] pumping plants, or 66 fences.

Q. I see.

A. Or 22 wells. That is just put on there so that if you want more detail on those items I can refer to my work sheet.

Q. Well, then, for the year 1926 what does that list of items purport to be? A. For 1926?

Q. Yes.

A. "Frame warehouse, \$10,000, frame buildings," those are various buildings scattered all over the 27,000 acres.

Q. Yes.

A. "\$20,000." Then I have under "X-1" means explanation 1, and we probably had 100 miles of fences that we didn't set up at all because we were not concerned with taking credit for all the deductions we could. We just set up the buildings and forgot the fences and never did set them up, and X-2 is pumping plant, \$1182.50.

Q. That is the value that was assigned to the pumping plant already in existence?

(Testimony of Frazier O. Reed.)

A. That particular pumping plant, but if I may look at that map——

Q. Surely.

A. (Continuing) ——I can show you where there were wells at the time. [141]

Q. I wonder if we can let that go for the moment, Mr. Reed, and I will ask you some other questions about this.

Now, were there any other improvements on the property at the time in 1926 other than those you have listed there? A. Yes, sir.

Q. What particular items of improvement have you listed here under the column headed "1926" which totals some \$31,000?

A. The frame warehouse is an individual building.

Q. No. I mean, how did you select these items to put here, Mr. Reed?

A. Those that we thought of at the time Mr. Curry was making up a list of buildings for depreciation purposes, and I will say to you now I was not very—my memory on that day was very poor because I didn't make it broad enough.

Q. Yes. Were there any other substantial items of improvements on the Bloomfield Ranch at the time it was purchased which are not listed here in 1926?

A. Yes, a good many wells, irrigating plants.

Mr. Marcussen: Well, now, I would like to make this statement: I think, apparently, there has been a misunderstanding.

(Testimony of Frazier O. Reed.)

The Witness: And some buildings——

Mr. Marcussen: (Interposing) If you will excuse [142] me just a moment, Mr. Reed.

If Your Honor please, I think there has been a misunderstanding with counsel because I discussed this with both Mr. Cushing and Mr. Cullinan, and requested (and I think that they undertook to produce it, but in the limited time apparently that was impossible) a statement showing the itemization and the amounts of the improvements that were on the property at the time it was purchased, together with a statement of the property that was added, the improvements, both wells and pipe lines, buildings and that sort of thing. Now, we don't have that in this statement, apparently, and I was wondering if counsel would agree to supply that in view of the understanding we had before the trial.

The Court: Before you answer that, Mr. Cullinan, let me ask Mr. Marcussen if he is trying to develop a certain point.

In this line of cross-examination are you trying to establish that Clayton & Company made improvements on this property and used the original improvements and the additional improvements for the purpose of carrying on a business on the property for the purpose of gain and profit?

Mr. Marcussen: Eventually that is what I wish to show, if your Honor please. I wish to show that there were many improvements made by Clayton & Company—— [143]

(Testimony of Frazier O. Reed.)

The Court: (Interposing) Well, now, seriously, Mr. Marcussen, do you contend that these improvements were so substantial that the conduct of the business was really a factor so far as the issue in this case is concerned?

Mr. Marcussen: Yes, I think it was.

The Court: Do you dispute the Petitioner's testimony given on direct examination that the property was maintained during the period in which it was held for sale in good condition, and that in order to maintain it in good condition some of the land was under cultivation, but that the activity that was carried on was primarily maintenance activity, just as a trustee of property keeps property with some tenants and probably operates it to some extent rather than to let it go down during the period in which it was held for sale?

Mr. Marcussen: Yes, I do, your Honor. I wish to show that in addition to that Clayton & Company as the operator for Bloomfield Ranch, actually made additional investments in the property by way of improvements, and that they were made for the purpose of facilitating their operations and of engaging in business, and that they called for business decisions from time to time for Clayton & Company to make. Now, then, this is——

The Court: (Interposing) Well, if that is your theory. I wonder whether you really have ever taken that up [144] with Mr. Cullinan because, as I get the picture in this case, and from looking rather hurriedly at the income tax return that is in evi-

(Testimony of Frazier O. Reed.)

dence as Exhibit "A," it doesn't appear to me that Clayton & Company realized very much income from this kind of operation of the property.

Now, supposing the Petitioner conceded all of these facts that you want to bring out on cross-examination, what are those facts relating to the operation of the property and the receipt of some income to the other body of facts which are made up of the sales of property and the receipts from sales?

Now, in weighing the evidence in this case, if the income from these so-called business operations that you refer to is a net amount of a thousand dollars a year, or two thousand dollars a year, and the gross receipts from sales of property is \$100,000, \$200,000, \$500,000 a year, I don't think you could seriously argue that these operations were carried on for any other purpose than the taxpayer says they were carried on.

I am wondering if you are not straining some minor point here, and, if so, you are going to keep us here late, and you are going to take up a lot of time, I think, with some inconsequential evidence.

Mr. Marcussen: I don't think it is inconsequential, your Honor. I think it is exceedingly important. [145]

The Court: Well. I am going to call on you to make an offer of proof because I think it is something that could be taken care of in ten minutes. That is my hunch about it. Now, if I am mistaken, why, I will be glad to have you point out that I

(Testimony of Frazier O. Reed.)

am mistaken, but I would like from your preparation of the case (and I know that it is not going to hurt your case) to ask you to make an offer of proof because Petitioner, that is, Mr. Reed and Mr. Cullinan, have shown that they are willing and anxious to present all of the facts. In fact, I think all of the facts in this case could have been stipulated. Now, it does run up the record unnecessarily to go into these items with such particularity.

Now, what is the broad overall picture as you see it on this point of the operation of the property? What were they doing? How much were they making a year, and all of that? Now, I know perfectly well, as any reasonable person would know, that if there were—this property, as I understand it, has been operated by Miller & Lux as ranch property, that is, they had hundreds of thousands of head of cattle grazing on the land. They had to water the cattle. Therefore, they had to have a water system. They had to feed the cattle; therefore, they were raising grain. That was dry farming, but they probably needed water for some purposes.

Now, they had on the property some pipes, they had a pumping system, they had an irrigation system. That [146] was on the land when it was taken over by Clayton & Company.

And Mr. Reed has testified that—I understand from his testimony, as it isn't very much on this point, that the implication of his testimony is that the pipe and water systems had to be kept up. Now, we all know those water systems on ranch properties turn out to be rather expensive if they are let go

(Testimony of Frazier O. Reed.)

to ruin. Therefore, a gentleman—what was his name, Mr. Cullinan?

Mr. Cullinan: Fitzgerald.

The Court: Fitzgerald was taken over from the old concern because he knew where these water properties were. Now, anyone buying that property would consider the pipe lines, pumping system of value. Therefore, they would have to be kept up in order to realize a good price in the sale of the property. They wouldn't want to take over some agricultural land and let the water system go to wrack and ruin so that the buyer would have to invest \$10,000 to repair something that was there originally. That is poor business. Now, if your point is that they were really making an investment, then I think you ought to say so and the taxpayer's counsel ought to have an opportunity to meet that argument right away. That isn't, so far as I understand, the evidence so far. Clayton & Company was not making any large investments in a water system or in [147] a pumping system.

Mr. Marcussen: Well, that is just what I wish to ascertain, your Honor.

The Court: Well, I think you ought to be able to get that out rather quickly.

Now, Mr. Reed, apparently Mr. Marcussen wants you to explain whether you made substantial investments in this property, substantial improvements on it. He wants to know whether you put in a big pumping system, a big water system, whether you put on a lot of sheds, and warehouses, and so forth.

(Testimony of Frazier O. Reed.)

Now, the schedule that you made up, I suppose you made up of items that figured in taking a depreciation in income tax returns, is that correct?

The Witness: That is correct.

The Court: So you didn't add to the list of properties of the land?

The Witness: No.

The Court: But you just took the list that had been used all along for purposes of taking depreciation on the returns?

The Witness: Yes.

The Court: Now, will you make this short, and you know what Mr. Marcussen wants to know. I know what he wants to know. And will you answer my question now. Tell us [148] as briefly as you can what improvements were made on these ranch properties after Clayton & Company took them over, indicating approximately how much money was spent, and why you made the improvements, and whether you received any substantial income each year as a result of the operation of these properties, and, if so, what the amount of the income was, and see if you can get that all cleared up for us in just about five minutes.

Mr. Marcussen: If your Honor please, I would like to have——

The Court: (Interposing) Would you let the witness answer the question, please?

Mr. Marcussen: Surely.

The Witness: The expenditures for 18 years, beginning with 1927 and ending with 1944, which

(Testimony of Frazier O. Reed.)

is four years beyond the year being questioned here, the expenditures averaged \$2897.61 a year.

Q. (By Mr. Marcussen): Is that taken from this Exhibit 12? A. That is right.

Mr. Cullinan: That is for improvements?

The Witness: That is right.

Breaking it further for your record, if you want, value set up in 1926, \$31,182.50. [149]

Q. (By Mr. Marcussen): That is the total of the first column under 1926 on Exhibit "E", is that correct?

A. Correct. None of that money was spent by the syndicate. Those were simply values that were set up by Mr. Curry as of the date of the end of 1926. Say, for income tax depreciation purposes, expended in 1927 through 1940, fourteen years, \$47,661.67. Expended——

Q. (Interposing) Now, Mr. Reed——

The Court (interposing): Will you let the witness finish answer the question, please, Mr. Marcussen?

The Witness: Expended in 1941 through 1944, four years, \$4,501.64.

Now, if you divide the total money expended from January 1, 1927, to December 31, 1940, by fourteen years, you will get \$3,404.40 per year. If you divide the money expended from January 1, '41, to December 31, '44, four years by four years, you will get \$1125.41.

The Court: You haven't finished answering my question, though. My question covered more than that.

(Testimony of Frazier O. Reed.)

The Witness: All right, I will go on.

The Court: What did you spend the money for? You better go back first. You had some improvements on the land when that was taken over from Miller & Lux. Now, if you will please give us a complete description of what was there. [150]

The Witness: There were, oh—I would have to look at the map to count the pumping plants that were there.

The Court: All right. Give Mr. Reed that map.

(The Clerk handed the map to the witness.)

The Witness: You understand when we were selling lands through here, and in here, and in here, and in here, and in here (indicating)——

Mr. Cullinan: (Interposing) Now, Mr. Reed, the record will not show what you are pointing at when you say “in here” and “in here” and “in here.”

The Witness: Well, when we sold portions of certain of these 21 ranches we often were compelled to sell the existing pumping plant with the portion we sold. That left us with remaining lands without any pumping plant, and we put a pumping plant back to replace the old that was sold, so it could be used on the remaining lands.

The Court: Well, now, explain in the first instance how many pumping plants were on the land (that is what you started to do) when you took it over from Miller & Lux.

The Witness: All right. There is a pumping

(Testimony of Frazier O. Reed.)

plant on Parcel 10 (indicating). There is a pumping plant on Parcel 11. There is a pumping plant on Parcel 13. [151]

Q. (By Mr. Marcussen): Is it possible to state as you go along whether or not they were constructed by Clayton & Company or were in existence?

A. No, these were on the land at the time the lands were purchased by the syndicate.

A pumping plant on Parcel 14, two pumping plants on Parcel 14; three pumping plants on Parcel 15, one pumping plant on Parcel 17. There were 9 pumping plans upon the ranches when they were purchased from Miller & Lux.

The Court: Now, what is a pumping plant?

The Witness: Well, that is a well.

The Court: It sounds, you know, like something they would have down at Boulder Dam.

Mr. Cullinan: And describe it.

The Court: Better describe what these pumping plants are and about how much it costs to put one in, and why you have one. Is it a little thing or is it a big thing?

The Witness: They develop between, oh, 600 and a thousand gallons of water per minute.

The Court: Do they pump the water out of a well?

The Witness: Out of a well. These wells in here, all through here (indicating) are anywhere from 200 to 300 feet deep.

(Testimony of Frazier O. Reed.)

The Court: Do you have a Diesel motor on them, or electric pump? [152]

The Witness: Well, when we took over many of those wells were equipped with a centrifugal pump, which can only pull the water a certain height, or from a certain depth, and in 1931—I don't want to forget that, because we had a cycle of dry years in California that became acute in 1931, and this is supported by the meteorologists, the weathermen all through California, to the end that it was necessary for us to do away with all but one of the centrifugal pumps and install in lieu thereof the deep well pumps.

The Court: Deep well?

The Witness: Deep well pumps, that is a pump that has balls at the bottom. A motor turns it rotary fashion and it forces the water to the top from a depth that a centrifugal pump couldn't get near. I think a centrifugal quits along about 30, 35 feet, and when the water in the well comes to less than 35 feet from the surface your centrifugal is of no value, and that happened all over the Santa Clara Valley. It was not here in particular. In fact, it happened all over California.

The Court: Well, how much did it cost you to put in those deep well pumps? Was that a substantial item when you had to do it all at once?

The Witness: Yes, and then when we pulled the old centrifugal pumps it was necessary to—the centrifugal pump [153] usually sits in a pit, that is, anywhere from 15 to 20 feet below the surface

(Testimony of Frazier O. Reed.)

of the ground, so that the suction to the water will take that much longer to break. If the pump sat on the surface of the ground, say, it would break at 30 feet. When you put it down 20 feet you then can draw water from 50 feet. And we had until 1944, when we sold this tract of land in here, a centrifugal pump that sat on top of the ground, which gives evidence that the wet land that I was telling you about——

Mr. Cullinan (interposing): Mr. Reed, would you stick to the question? I think you are wandering a little bit now.

The Witness: But it is all with regard to it.

Mr. Cullinan: The question is: What changes in the wells were necessary? That is what you started to tell.

The Witness: Well, when the water went down in '31 we had to change over to deep well pumps, and in order to install a deep well pump it was necessary in many instances to run a new casing down and then fill around the casing in the pit. You run the casing down the pit. That is an open hole.

The Court: All right, now we understand that. Now, how much did that all cost you?

The Witness: Well, everything done over a period of 18 years, including all of that work, only cost \$52,162. [154]

The Court: Well, that won't do exactly. Counsel for respondent is making quite a point of this. He attached a lot of importance to it. You had, maybe,

(Testimony of Frazier O. Reed.)

ten or fifteen pumps here to reconvert. About how much would it cost to put in a deep well pump?

The Witness: I have never broken that down, but this statement, if they want to take the time, we can do it exactly.

The Court: No, I am trying to save time. Now, would you look at that and tell me, if you can, about how much did it cost, or find something there that would give us an idea?

The Witness: Well, in 1927 we put in a new pumping plant that cost \$1940. In 1928 we bought surface irrigating pipe, which cost \$1,000.

The Court: Now, all of that detail is on Exhibit "C", is it?

Mr. Cullinan: "E".

Mr. Marcussen: "E".

The Court: "E".

Mr. Cullinan: It can all be worked out in the briefs.

The Court: Well, I don't know. It can be, if it is made perfectly clear that the purchases of pipe and the installation of pumps was only for the purpose of reconditioning [155] something that was already there, and if that is true, I want to know that from the witness. You can't cover that by the brief.

The Witness: Well, we put in——

The Court (interposing): Let me ask you this:

Now, you have indicated how many pumps there were, and you have said that during a drought

(Testimony of Frazier O. Reed.)

period you had to change some of those pumps over to deep well pumps.

The Witness: Yes.

The Court: Now, did you put in any new pumps, or were your expenditures limited to reconditioning the old pumps that were there?

The Witness: No; we put in some new wells.

The Court: All right.

The Witness: And new pumps.

The Court: Now, how many, and why did you put them in?

The Witness: I can answer you why, but I can't tell you the number because I have never broken it down that far.

The Court: Can't you guess? Was it between——

The Witness (interposing): I don't like to guess.

The Court: You have to know. You are in a spot now because we want to know this, and you have to guess. You will have to guess within a margin. [156]

The Witness: I would say probably we put in ten new wells.

The Court: All right.

Q. (By Mr. Marcussen): On the entire property, Mr. Reed, is that correct?

The Court: Ten, more or less, that is fair enough. Now, why did you put them in?

The Witness: Because in some instances we sold the pumping plant by which the remaining land was irrigated.

The Court: You mean you sold a piece of land on which there was a pumping plant, is that right?

(Testimony of Frazier O. Reed.)

The Witness: That is right, and in some instances we had to put in a new pumping plant to take care of the remainder of the land.

The Court: Well, now, without going into any more detail about that, why did you have to have any water on this land if you had just bought it for resale?

The Witness: Because of the depression stopping the sales in 1930. We sold 25,000 acres up to the end of 1930, and we had about 2500 acres left, and there was just no sale, and——

The Court (interposing): Well, now, the government's view——

The Witness (interposing): For the remainder.

The Court: Mr. Reed, you will have to keep in mind [157] what the theory of the government in the case is. The government visualizes this in this way: You, representing the taxpayer, say that you bought 27,500 acres of land for the purpose of reselling it.

The Witness: That is right; that is right.

The Court: Now, the government takes this view about it: if that was all you were going to do with it, it is just God's open country, you don't need to do a thing to it except go sell it. You don't have to have any water on it, you don't have to do anything. That is, perhaps, an academic view, but that is the view they are taking.

Mr. Marcussen: May I state for the record that is not the Respondent's view, Your Honor.

The Court: Well, it must be your view because when you go beyond the point of holding this as

(Testimony of Frazier O. Reed.)

barren and lifeless and arid land, or something, just solely for the purpose of resale, your theory is as soon as you go one step beyond that you are engaged in business of operating the land for profit.

Mr. Marcussen: No, Your Honor, that is not Respondent's position. Respondent's position——

The Court (interposing): You stated that was your position a few minutes ago.

Mr. Marcussen: No, I beg your pardon, Your Honor. I don't think I did. [158]

I wish to have an opportunity to answer the statement, Your Honor, made some time ago. I can probably do it on brief, and I don't suppose it is necessary here.

The Court: Well, I will finish with this my way.

Why did you have to have any water on your land?

The Witness: From what sources would we have gotten the money to pay the taxes upon the unsold land?

The Court: Now, the theory in these cases is that the taxpayer goes into a business for profit, and had you gone into the business of raising cattle on this land during the period you were holding it?

The Witness: No.

The Court: Had you gone into the business of raising grain on the land?

The Witness: Only in the beginning as a means of keeping the land in condition.

The Court: Is that why you needed water?

The Witness: No. Well, we needed water when the price of barley and wheat went lower than in the history of this country.

(Testimony of Frazier O. Reed.)

Q. (By Mr. Marcussen): As a matter of fact, when you discontinued the growth of grains and the cultivation of grains, and went into truck farming you needed this water for those operations, whereas, you hadn't needed it for the wheat and other grains, is that correct, Mr. Reed? I think you stated that in your direct examination.

A. Well, we took over the Miller——

Q. (Interposing): Well, isn't that——

A. (Interposing): Just a minute now! When we took over the Miller & Lux holdings they were growing garlic, which requires some irrigation. They were growing some tomatoes, they were growing potatoes, they were growing strawberries when we took over, plus other truck crops. And we never went into operation for rental income. We did it because we were forced into it by the depression conditions. And I have tried to explain that to everybody all the way up here.

The Court: That was why you had water then to carry on, you had to have your water to carry on this truck farming, is that right?

The Witness: That is right, to keep the land from going to waste, because only a fool would plant barley or wheat to keep land clear that he couldn't sell, and that he couldn't make a profit on the produce.

The Court: Well, I think that covers it.

You testified on direct examination that some part of the land was kept under cultivation, and we have evidence, I think, on what the income from those

(Testimony of Frazier O. Reed.)

operations was. And you have testified that the income from such operations in [160] effect helped you to carry the property to pay taxes and so forth.

Now, we have in evidence as Respondent's Exhibit "E," a schedule of that.

Now, what is the purpose of Respondent's "E" in evidence?

Mr. Marcussen: The purpose is to show the investments which were made in each one of the years from 1927 through 1944.

The Court: By this taxpayer?

Mr. Marcussen: Yes, by this taxpayer.

The Court: Does Exhibit "E" show any figures, Mr. Reed, which do not represent investments made by the Bloomfield Ranch properties?

The Witness: Yes.

The Court: Will you read them into the record, please?

The Witness: The figures appearing in the column headed "1926" were set up by the income tax accountant for depreciation purposes, and those amounts of money were not expended by the taxpayer.

The Court: Do you have a recapitulation anywhere here (examining document)? No. Only the bottom column?

The Witness: Yes.

The Court: Or totals? [161]

The Witness: Yes. If you want, I will put that on for you.

(Testimony of Frazier O. Reed.)

The Court: You had a recapitulation on some copy that you were reading from?

The Witness: Yes.

The Court: Well, then, with that explanation does Exhibit "E" speak for itself, Mr. Marcussen?

Mr. Marcussen: No, I don't think it does, Your Honor.

The Court: What more do you want the witness to explain from Exhibit "E"?

Mr. Marcussen: I will ask him a couple of questions, if I may, and clarify it.

Q. (By Mr. Marcussen): Now, those figures include, I think you stated——

The Court (interposing): Just a minute, please.

I would like to ask the witness to copy onto Exhibit "E" a recapitulation which he has on his own copy. I think it would clarify——

The Witness (interposing): You may substitute this for Exhibit "E," if you like, and I will take this (indicating).

The Court: All right. Are these two otherwise the same?

The Witness: They are identical. [162]

The Court: Mark this as Exhibit "E."

Mr. Marcussen: This simply has an additional statement, I take it?

The Court: Well, you can look at what is done there.

Off the record.

(Discussion off the record.)

(Testimony of Frazier O. Reed.)

Q. (By Mr. Marcussen): Well, that is not the total of all the expenditures by the Clayton Company, the \$83,000? A. Oh, yes, it is.

Q. By the Clayton Company? Now, just let me ask you these questions.

It says here "Balance set up in 1926," and I think you testified a moment ago that 1926 contains a statement of some of the improvements that were already on the property at the time it was purchased; is that correct? A. That is right.

Q. It is included in your total of \$33,000; is it not? A. That is right.

Q. And that is a total of \$31,182.50; is that correct? A. That is right.

Q. In determining the total that was expended by the Bloomfield Ranch, we must deduct that figure from the total, [163] is that not correct?

A. That is what I did here (indicating).

Q. No, I don't think you did. I think you added these.

A. Well, I mean that if you deduct——

Q. (Interposing): Just let me ask these questions, and you answer them for the record, Mr. Reed.

The total improvements in money value, or cost, I should say, made by Bloomfield Ranch are contained in the columns 1927 through 1944, is that correct? A. That is correct.

Q. And the total that you show here, the \$83,000, includes also the \$31,000 shown in 1926, which was not an improvement made by Bloomfield Ranch, but was already there at the time the property was

(Testimony of Frazier O. Reed.)

purchased, is that correct? A. That is right.

Q. Therefore, by deducting the \$31,000 from the \$83,000 we will get the total represented in the columns 1927 to 1944, which represents the amount of the cost of the improvements made by Bloomfield Ranch, I should say by Clayton & Company as operator of Bloomfield Ranch, is that correct?

A. That is correct.

Q. Very well, I think we have that straight then.

Now, with respect to that sum total, which is approximately \$52,000, I think you stated that some of it did not [164] represent entirely new improvements but represented changes in existing facilities on the property, is that correct?

A. That is right.

Q. And those changes consisted not in reconditioning but actually changing the nature of the installation entirely, is that not correct? I think you mentioned rotary pumps a moment ago, and you put in an entirely new installation.

A. I would say that it included both because I didn't know that you wanted this broken down in the detail that you are asking for now, or I would have stayed up longer on Sunday night.

Q. Well, then, do you have any idea at all as to what proportion of that \$50,000 represents new improvements and what proportion of it is reconditioning? A. I do not know.

Q. And what proportion is repairs? Do you have any idea as to that?

(Testimony of Frazier O. Reed.)

A. Let me explain this: in 1931 you will see a charge of \$125.35 which is listed as a well. Now, you couldn't buy the casings for a well with \$125, so that item in itself tells you that it is some improvement made to an existing well.

Q. Well, the item doesn't—

The Court (interposing): You are going into a lot of unnecessary detail. Mr. Marcussen. Now, the taxpayer witness has testified they carried on some truck gardening. He has told why they did it. And I think the record by now shows how much they got out of it a year.

Mr. Marcussen: Well, I would like to ask a question as to what is the significance of these "X" marks on the side, if Your Honor please.

The Court: Well, that isn't what you have been asking. I am telling you that you are going into too much detail. Now, go ahead from there. But you are going into an awful lot of detail that isn't necessary in your case.

Q. (By Mr. Marcussen): Well, picking up with the witness where he left off, you state that the item in 1931 for \$125.35 was merely a repair to an existing well, is that correct?

A. That is correct.

Q. That is marked with an "X-4" in the extreme left hand column of this exhibit. Do you notice that? A. Yes.

Q. Now, I notice a number of others items. I won't identify them now. But there are one, two, three—

(Testimony of Frazier O. Reed.)

The Court (interposing): He has already explained that, hasn't he?

Mr. Marcussen: Four, five, six. No, I don't think he has. [166]

The Court: Didn't you explain those with reference to your work sheets?

The Witness: The numbers, but these "X-4—"——

Mr. Marcussen (interposing): I am not talking about those numbers.

The Witness (continuing): I put down there just to remember that I should tell you not every time you see a debit entry in one of these columns labeled out here "well" does it mean a new well.

Q. (By Mr. Marcussen): Very well. Now, I will ask you with respect to each one of those other items that I just identified.

Are they also in the same category as the item of \$125 for the year 1941, which you just described a moment ago? In other words, are those repairs to existing facilities?

A. No, that doesn't—those are just made as memoranda, those "X-1" up to "X-4".

Q. Very well. What is the significance of those items? Are those items all the same? Do they have some point in common?

The Court: I told you a few minutes ago you are going into too much detail.

Mr. Marcussen: Well, if your Honor please, I am attempting to understand this exhibit.

The Court: I think the exhibit is perfectly clear.

(Testimony of Frazier O. Reed.)

The issue in this case doesn't require that you get the witness to explain these little things that you are asking him about.

Mr. Marcussen: Well, I would like to show the amount, the value of the improvements which were made which constituted new improvements. Now, I had a discussion with counsel before this case was tried, and it was undertaken to supply that, and when I started cross-examination on this point quite some time ago I attempted to show that there had apparently been some misunderstanding in that request for information, and I want to point out——

The Court: Yes, I know, you pointed that out quite a while back.

Now, do you want to withdraw Exhibit "E", or do you want to leave it in?

Mr. Marcussen: No, I merely want to ask counsel now whether we can stipulate to that amount, and whether that amount will be stipulated to in accordance with an agreement made before the trial.

Mr. Cullinan: We will be glad to supply it, if it is capable of supplying. Mr. Reed explained it to you, that he was having great difficulty identifying expenses because of the way they kept the accounts on old wells and those on new.

Am I correct, Mr. Reed? [168]

The Witness: That is right. We have had no setup of wells. There has been no——

The Court: Well, may I suggest, Mr. Cullinan, that, perhaps, failure of proof on this point is

(Testimony of Frazier O. Reed.)

worth more to you than going to the trouble of supplying this kind of detailed information. I think it is up to you to decide whether the issue requires that you give a breakdown of how much was spent for some new equipment on pumps and how much was spent for repairing some old pumps in view of the fact that the total amount expended for all of this over a period of fourteen years was not very much. Now, if you want to supply that evidence——

Mr. Cullinan: We will agree to.

The Court: If you think that it is worth going to the trouble, I will receive it and keep the record open.

Mr. Cullinan: I do think so.

The Court: But if you think that it isn't necessary, then you certainly are entitled to use your judgment on that.

Mr. Marcussen: If your Honor please, I wish to state for the record that if I did not have confidence that this information would have been supplied, I would have subpoenaed such records as would show it and bring them here, and for that reason I do not think the respondent's position should be prejudiced.

The Court: Mr. Marcussen, as you say, you don't [169] think respondent's position should be prejudiced. I still don't think that this is really very important to your case. I think you would still be wasting a lot of time if you subpoenaed those records.

(Testimony of Frazier O. Reed.)

Now, what is the total amount that has been spent there? You want to have the figure broken down, don't you?

Mr. Marcussen: Your Honor has referred to the comparatively small sums that have been put into these operations or into these improvements in proportion——

The Court (interposing): I am thinking about the issue in this case and the decisions by the Courts and the decision by this Court, the decisions by the Courts on appeals, and the decisions by this Court, and think you are going into too much detail, and I will stick to that.

Now, I will ask you a question: What is the total figure you wish to have broken down?

Mr. Marcussen: That is some \$52,000 of improvements made.

The Court: You want to have a fifty-two thousand dollar figure broken down into two figures, is that correct?

Mr. Marcussen: Yes.

The Court: Let us just be sure what you want.

Mr. Marcussen: That is correct.

The Court: All right. And you want that figure broken down to show how much of \$52,000 was spent for repairs [170] and how much was spent for new equipment?

Mr. Marcussen: New equipment and new installations, not including repairs, for example, a complete change in the installation.

(Testimony of Frazier O. Reed.)

The Court: Well, we also could have one day's trial arguing about what represented repairs and what represented new installations. Now, don't let's get into that either.

Generally, that is what you want, is that correct?

Mr. Marcussen: That is correct.

The Court: All right. I can imagine that we could have a fine argument about whether enlarging a pit or a deep well pump was a repair or a new installation.

Mr. Marcussen: I don't think we would have any argument about it. I think we will stipulate with counsel.

The Court: I still think you are going into too much detail.

Mr. Marcussen: I want to point out—As your Honor pointed out you considered that these amounts were apparently trivial and small in comparison to the size of the whole operation. I want to emphasize that 90 per cent of this entire property was sold in the first four or five years, there remained only about 10 per cent, namely, some 2600 acres, and an expenditure of \$60,000 in that time in [171] improvements and repairs for the operations that were conducted, namely, farming operations is not a minor matter, and I think it is important.

The Court: Well, that is your statement at the present time. I would say that your argument was not one that I could give very much consideration to, but supposing you go ahead now. We have finished with Exhibit "E" at this point.

(Testimony of Frazier O. Reed.)

Q. (By Mr. Marcussen): Well, Mr. Reed, with respect to those improvements that were made, who decided to make those improvements, whose judgment was involved? Was that your judgment?

A. Yes.

Q. And did you consult with engineers with respect to the matter of improving the property and receive their advice on it? A. No.

Q. You were familiar enough with the situation yourself to make those decisions?

A. We have farmed many thousands of acres in addition to this for other customers and for ourselves, and I think this record reveals that we are quite successful as farmers.

Q. Now, I think the record shows also that the bank loans were paid off, the bank loans and also the loans from Miller & Lux of some \$200,000, and the bank loans of some [172] \$300,000. I think, making a total of \$585,000 were paid off rather shortly after the operation commenced; is that correct? A. I think in '27.

Q. In 1927? A. It was completed.

Q. And who exercised discretion with respect to the payment of those bank loans? Did you discuss that with anybody, or did you as the manager— A. (interposing): I did.

Q. You came to that conclusion?

A. Yes. I was trying to beat the depression to get out of debt. We expected it to come; we thought it would come before 1929.

Q. Very well. I think you have there the ex-

(Testimony of Frazier O. Reed.)

hibit which is the map. Can you get that out? This is Petitioner's Exhibit 14.

And I call your attention to the statement on the map that "only parcels 1 and 14 and portions of parcels Nos. 10 and 15 had been subdivided. The subdivided portions represented less than 6 per cent of the total area of the 21 ranches."

Now, are those the subdivisions referred to by Clayton & Company, were those the subdivisions which were made by Clayton & Company? [173]

A. Yes, Sir.

Q. And then in addition to that there was other land which was already subdivided, is that correct?

A. Oh, no. It was just these little lots here (indicating), maybe, not over 20 in the City of Gilroy, and I think this parcel too (indicating).

Q. Now, wait a minute. Those in the City of Gilroy, and not exceeding over 20, were those that were already subdivided by Miller & Lux, is that correct?

A. That is correct.

Q. Are they included in this 6 per cent?

A. Yes, sir.

Q. They are included here?

A. Beg your pardon. No, they are not.

Q. They are not.

A. Because they were already subdivided. Parcels that we subdivided represent less than 6 per cent of the whole.

Q. Correct. This reference, then, on the map is to the subdivisions which Clayton & Company, the operator for the Bloomfield Ranch, actually made, is that correct?

A. That is correct.

(Testimony of Frazier O. Reed.)

Q. Now, in the course of the subdivision, will you state briefly, very briefly, what is the procedure to be followed? You file a map, do you, with the city authorities? [174]

A. Yes, with the County.

Q. With the County?

A. With the County.

Q. And you filed those maps for Clayton & Company? A. That is correct.

Q. And for Bloomfield Ranch?

A. That is correct.

Q. And then in addition to that I think you stated a moment ago that there were no actual improvements made by Clayton & Company, that is, putting in the curbings, or laying streets, or any of that sort of thing, none of that was done by Clayton & Company, is that correct?

A. No. There may have been a grading of a road with a road grader, but no—just temporary.

Q. But I take it that Bloomfield Ranch actually did convey some of the properties to the County or to the City for the purpose of making those streets, is that correct?

A. They dedicated land into county roads for the use of the public.

Q. That is right. A. And easements only.

Q. And they filed certain deeds with the proper officers concerning that?

A. Maps; not deeds; maps. The dedication is upon the official map in California. [175]

Q. Now, I think you stated that most of the

(Testimony of Frazier O. Reed.)

property (and I think it is contained in the stipulation), about 90 per cent of the property was sold in the first four or five years of operation, and after 1931 there were very few sales; is that correct?

A. Yes, sir.

Q. And you stated at that time that you couldn't sell it. Do you mean actually that you couldn't have found a purchaser at any price for the property?

A. I gave as an illustration that Brentwood Orchard, which——

Mr. Cullinan: Just answer the question, please.

The Court: Just "Yes" or "No".

The Witness: Well, when I am asked a question, could I have found anyone at any price, that is too broad, because——

Mr. Cullinan (interposing): You could have given it away?

The Witness: Oh, yes. That is too broad.

Q. (By Mr. Marcussen): You mean you couldn't have sold it at a profit? About what would you consider to be a profit? You mean a profit commensurate with the level of——

A. (Interposing): We could have cut the price of the land half and we could not have sold it. We probably could [176] have cut it down in price by 75 per cent and couldn't have sold it in 1930, '31 and '32. Brentwood Orchards came down from \$700 an acre to \$100 an acre, as I told you this morning.

Q. And your reason for not selling that is that you wished to keep it, maintain the property until

(Testimony of Frazier O. Reed.)

such time as you figured you could sell it at the profit you expected on the operation, is that correct?

A. Clayton & Company made——

Q. (Interposing): Would you just answer that?

A. (Continuing): ——made representations to the syndicate members, as I have testified here, and naturally we wanted to make a profit for them if we could, and we didn't want to give anything away.

Q. Now, I don't know whether the record is entirely clear with respect to this point, but while the agreement which was executed between Clayton & Company on the one hand, and the investors on the other, contains a provision to the effect that leases shall be made for only one year, actually leases were made for a longer period of time, is that not correct, after 1930?

A. That is right. I said we violated the agreement and rented for longer than one year, but I don't think there was a violation prior to 1930.

Q. And from time to time there were also renewals of [177] the one-year leases, is that correct?

A. You mean we gave a new lease to the same tenant that had been on before?

Q. Yes. A. Yes.

Q. Now, in addition to Mr. Fitzgerald, whom you mentioned as an employee you took over from Miller & Lux, you also had another employee whom you were regularly employing as a supervisor generally for the lands, isn't that correct?

A. Mr. Ayer.

(Testimony of Frazier O. Reed.)

Q. And what was his compensation?

A. \$200 a month, and he supplies his automobile and tires and gasoline. He is a part-time man only. He runs his own ranch and has usually between a thousand and two thousand head of cattle, and he just gives me a little help down there; saves tires and gasoline.

Q. Yes. And I think the total labor expense on the return for 1940 is some \$3900. The difference represents other temporary employees who were brought in to perform specific operations, is that correct?

A. Yes. But in that regard let me explain that Mrs. Curry sometimes includes in labor there cultivation, occasionally, or any unusual work she puts under labor. Don't get the impression that all of those people are—they [178] may be working with a tractor, they may be harrowing, they may be seeding, they may be cleaning up weeds, cleaning ditches and things.

If we had known this situation would have arisen we would have handled the account a little better, but we only carried it just as a debit and credit account the same as we would for you or anyone else. That is why it is so difficult to supply you with the information that you have asked for because it means that we have to go over the statements for nineteen years and dig it out, and it is not identified in any manner. It just runs along exactly like this account here.

(Testimony of Frazier O. Reed.)

Q. I am looking for an exhibit, one of respondent's exhibits, which I am unable to locate for the moment.

I merely want to ask you this:—well, I will make this statement: I think those exhibits show cultivation and harrowing and plowing and discing as a separate expense.

That has not been included in the item of labor from year to year, has it?

A. No, no, but——

Q. (Interposing): Yes. Well, I think the exhibit will speak for itself.

A. (Indicating): It is all set up there.

Q. Yes, that is it.

A. You have it all in your income tax all broken down [179] and itemized.

Q. Well, then, the presumption is in view of the fact that it is not listed there that that item of labor did not include ploughing in the 1940 return, did it.

A. Well, let me take a look and see if I have it. You have it broken down there before you.

Q. I want to call your attention specifically, for example, to the year 1927 and to Respondent's Exhibit "C", which shows an item "discing, cultivating and ploughing," of some \$14,684, and likewise in 1928——

A. (Interposing): That was when we were farming for wheat and barley to keep the land cultivated so that we could sell it.

Q. Yes. And then some separate items for the

(Testimony of Frazier O. Reed.)

year 1928 of some \$3,000, and for discing and for ploughing some \$5,000, and for harrowing some \$500. So I doubt whether any of those expenses were included in the item of labor in the returns.

A. I think labor, generally speaking, includes just labor, but it might include some labor done in connection with cleaning ditches.

Q. Now, would you state why title to the property was taken in the name of M. E. Thomas?

A. Because we had been in the habit of forming syndicates since about 1910. In 1911 we formed a syndicate of [180] four men, three of whom were members of the Bloomfield syndicate. One of those men died and his estate was in probate for over a year. In the meantime we lost several sales because we couldn't deliver title, so ever after that we took the title to syndicate property in the name of some of the women, some one of the women employed by us. That is the reason why we put the deeds for all of the Bloomfield lands in the name of M. E. Thomas.

Q. In other words, for operating convenience it worked out better that way, you were able to get all of your income——

A. (Interposing): Purely to avoid losses which might result in the death of one of the syndicate members.

Q. And I presume that was done pursuant to the paragraphs here in the agreement, itself expressly providing for taking title in the name of Thomas or any other party?

A. That is right.

(Testimony of Frazier O. Reed.)

Mr. Marcussen: For the record I would like to call your Honor's attention specifically to that part of the agreement, if the Court please.

It states:

"The operator is to take and hold title to said properties originally in the name of M. E. Thomas, but may take such title in the name of any other person, corporation, or concern, or in its own name, [181] and may have such title conveyed from time to time to other persons, corporations, or concerns, or otherwise conveyed or held as the operator may desire in trust for the said fourteen investors above referred to for the profitable resale thereof."

If your Honor please, that concludes the government's case on the evidence, and I don't presume at this time that you want any argument or a statement as to what respondent's position is.

Mr. Cullinan: I have one question on redirect, only one. Maybe we can make it very short, the answer to it.

Redirect Examination

By Mr. Cullinan:

Q. You said you violated the agreement respecting the terms of the lease after the depression began. Why?

A. In order to make longer than one year leases.

Q. Why did you have to make longer than one year leases?

A. To obtain any income, to obtain a tenant, and there were only a very few of those. I could give you the number, if that would be of any interest.

Q. In other words, you couldn't get tenants for one season leases? A. That is right.

Mr. Cullinan: That is all. [182]

The Witness: And those were very few, as I told you, I would say less than a half a dozen over the entire time.

The Court: I want to ask you one question.

Title to all of the land was held in the name of M. E. Thomas, and I would understand from that that it was not necessary to record any assignments of interests from one syndicate member to another.

When money was borrowed from the Bank of Italy were the individual syndicate members made liable in any way?

The Witness: No.

The Court: Who borrowed the money?

The Witness: M. E. Thomas signed the note, signed the notes and deeds of trust. I made the arrangements with the Bank of Italy for the \$335,000, and I made the arrangements with Miller & Lux for the \$250,000. And they both understood that they would only get the signature, or be supplied with the signature of M. E. Thomas.

The Court: That is all.

The Witness: The security which they had was excellent. In fact, the Bank of Italy did not take——

The Court: (Interposing) You don't have to extend your answer any further.

(Testimony of Frazier O. Reed.)

The Witness: All right. May I make a statement off the record? [183]

Mr. Cullinan: No. I suggest you——

The Court: (Interposing) No. I think you have finished answering that question.

The Witness: All right.

The Court: I would like to know, though, Mr. Cullinan, if there is any evidence on this point: Did these other persons ever participate in any way in making decisions or in managing the property?

Mr. Cullinan: I think on direct Mr. Reed testified that they did not, that they were not consulted, they never interfered with the operation, and he made the decisions, and as he met them occasionally he told this one or that one what was doing.

The Court: All right.

Mr. Marcussen: If your Honor please, may I ask two more questions?

The Court: All right.

Recross-Examination

By Mr. Marcussen:

Q. I want to clarify this point, Mr. Reed: With respect to the transfer of shares or interests in Bloomfield Ranch all of them were recognized, were they not, by Clayton & Company?

A. Yes, sir.

Q. All of the transfers were recognized? [184]

A. Yes, sir.

Q. And I think at one point you indicated there was some hesitation in transferring one——

(Testimony of Frazier O. Reed.)

A. (Interposing) No.

Q. In making one of the transfers, rather. Let me finish this, if you will.

And I wanted to ask you whether there is anything in the agreement which would authorize—the agreement of March 10, 1926, which would authorize refusal to recognize a transfer of the shares?

Mr. Cullinan: The agreement speaks for itself.

A. No, nor did it give anyone the right to demand that they be transferred.

Q. (By Mr. Marcussen): And I also ask you——

Mr. Cullinan: (Interposing) I think the record also shows that Clayton & Company just acknowledged receipt of notice of transfer.

The Witness: That is all we did.

Q. (By Mr. Marcussen): And you also made payments, did you, to the parties to whom the assignments were made? A. Yes.

Q. Payments were made after notice of the assignment was received to the assignees? [185]

A. Yes, sir.

Q. Then I want to ask you one more question: On the death of one of the original investors, was there a termination of the alleged partnership, Bloomfield Ranch? A. No.

Q. There was no re-organization on such occasions? A. No.

Q. Nor on any of the other transfers inter vivos?

A. No.

Mr. Marcussen: That is all.

Mr. Cullinan: That is all.

The Court: That concludes the hearing in this proceeding, except the record will be kept open to receive a stipulation of some facts.

The Clerk will now read the dates for the briefs under the present rule.

The Clerk: Original briefs will be due August 24th; reply briefs September 8th.

Mr. Cullinan: Original briefs August 24th?

The Clerk: That is correct.

Mr. Marcussen: I wonder, if your Honor please, whether, if it is agreeable to counsel, we could have an extension for the second briefs? I think that is August 24th, it is approximately fifteen days, is it?

The Clerk: From today? No, it is 45 days.

Mr. Marcussen: Yes, it is 45 days. No, I mean between August 24th and September 8th, could that be postponed another fifteen days by agreement with counsel, if it is all right?

The Court: What do you want? Do you want thirty days for the reply?

Mr. Marcussen: Thirty days for the reply.

The Court: Why?

Mr. Marcussen: Well, it would be convenient is all, unless it would disturb your Honor's calendar or consideration of the case.

The Court: I might say that Respondent's briefs are always late anyway these days. I don't think it makes much difference what date I set down. I am granting motions to extend time for briefs all the time.

Mr. Cullinan: If it is possible under the rule, we would like to have a little more time to file the open-

ing briefs, because it may be ten days or two weeks before we get the record.

Mr. Marcussen: That would be quite agreeable with me, if your Honor please.

Mr. Cullinan: In fact, we have all the law brief now. It is only a matter of being able to refer to pages of the record to sustain our statements respecting facts.

August 24th is all right for us. [187]

The Court: I am quite sure that you will receive the transcript in the time that you are supposed to receive it, which is ten days from the date of the trial.

Now, the rule as made covers that situation, and I think it is better to stick to the rule, and I may say that I have never refused a late brief, unless the situation were extreme, and if your brief is filed within a reasonable time after the date it is due, with a motion asking that it be received late, I will receive it late. But I know that Respondent's brief will be late. I don't know about Petitioners' brief. When Respondent's brief is late, of course, it throws out the dates for everybody. And we do have a great deal of difficulty at present in certain sections of the country. Perhaps, that won't be true here.

That concludes the hearing of this proceeding.

(Whereupon, at 5:15 p.m., Tuesday, July 10, 1945, the hearing was closed.)

[Endorsed]: Filed Aug. 7, 1945. [188]

PETITIONERS' EXHIBIT No. 1

\$50,000.00

San Jose, Cal., March 10, 1926.

This is to acknowledge receipt by the undersigned, James A. Clayton & Co., a corporation of San Jose, Cal., hereinafter called the "Operator," from J. P. Dorrance of San Jose, hereinafter called the "Investor," of the sum of Fifty Thousand (\$50,000.00) Dollars, which sum is so received by, and paid to, said corporation on the terms and conditions and for the purposes, as hereinafter set forth and not otherwise, to-wit:

The Operator is to use said sum, together with other sums contributed by thirteen other persons, who are also referred to herein as "Investors" and other sums borrowed or advanced by said Operator—the unpaid portions thereof, may be re-borrowed or renewed, and security given—in the purchase of certain lands and interests, in the counties of Santa Clara, San Benito and Santa Cruz, California, belonging to Miller & Lux, Inc., and consisting of approximately 27,000 acres of land, together with divers rights, appurtenances and easements as described in three deeds to M. E. Thomas dated March 3rd, 1926, and recorded March 10th, 1926, in Santa Clara, San Benito and Santa Cruz Counties, Cal.

The Operator is to take and hold title to said properties originally in the name of M. E. Thomas; but may take such title in the name of any other person, corporation or concern, or in its own name; and may have such title conveyed, from time to

time, to other persons, corporations or concerns, or otherwise conveyed or held. as the Operator may desire, in trust for the said 14 investors above referred to, for the profitable resale thereof.

The Operator may sell, convey, hold, lease for one season only, or in any otherwise deal with and treat said properties as the sole and absolute owner thereof in fee simple, and without let or hindrance from the Investor, or any of the Investors, less than the full number thereof, or any other person or concern, whatsoever. But may not exchange, encumber, nor lease except as above specified, nor sell trees, wood or improvements off from said property without the consent of the investors.

The Operator may, from time to time, incur such costs, expenses, and charges in connection with the acquiring, holding, renting, selling or protecting of said properties, as it may deem proper; and the fact of the Operator incurring such cost, expense or charge, shall conclusively establish the propriety and legality thereof.

The Operator shall keep true and accurate books of account, in which shall be set down, from time to time, all moneys paid out and charges, expenses and costs incurred in the premises, and all sales made and properties disposed of, and moneys or other things of value received by it in the premises.

Out of the moneys received from sales or renting or other sources of said properties, the Operator shall first retain for its own use and benefit, a commission of five per centum (5%) on the gross selling price of each parcel sold, [189] as sales are

made, and from the net proceeds of such sales, after deduction of its commissions, the Operator shall pay all costs, expenses, and charges paid or incurred by it in the premises, and all moneys advanced or borrowed by it, together with interest thereon.

From any residue of moneys remaining in the Operator's hands, after all the foregoing payments have been made, the Investor shall be entitled to have returned to him, at the same time, and in equal amounts, as are returned to the other Investors, the whole or such part of the said sum herein receipted for, as may, in the judgment of the Operator, be safely paid, without jeopardy to any remaining properties or assets, not yet converted into cash; but no Investor shall be entitled, as of right, to any payment or return, or repayment before said properties and the proceeds thereof, have been converted into cash, and all such commissions, debts, advances, costs, charges and expenses have been fully paid, provided, however, that upon the payment of the debts, taxes and charges accrued, such funds shall be distributed equally to said Investors whenever there shall be a net amount of \$7000 or more on hand.

When, as, and if all of said properties, and all properties, and all proceeds therefrom shall have been sold and converted into cash, and all such commissions, debts, advances, costs, charges and expenses shall have been fully paid, and all moneys advanced by the Investors shall have been fully repaid, all moneys, if any, then remaining in the hands of the Operator arising out of said transactions, and not applicable to any of the foregoing require-

ments, shall be, by said Operator, paid to and divided among the Investors, in equal shares to each of them, their heirs and assigns.

It is authorized, understood and agreed, however, that the Operator has charged, and is entitled to a commission of Fifty Thousand (\$50,000.00) Dollars for the negotiation, purchase and consummation of sale of said properties from Miller & Lux, Inc., to said M. E. Thomas, which is in addition to commissions to be credited to it for subsequent resales, and which shall be added to, and included in charges and expenses of the transactions herein provided for, and accounted as part of the original purchase price of said properties.

The Investor shall be entitled to have an account rendered to him by the Operator, of all transactions hereunder, on demand, but not more often than once each sixty days.

These presents are executed in duplicate by the Operator and the Investor, the day and year set out at the opening hereof, and shall be binding upon the successors, heirs, representatives and assigns of each of them.

JAMES A. CLAYTON & CO.,
By FRAZIER O. REED,
Its President.

W. S. CLAYTON,
Its Secretary.
Operator.

J. P. DORRANCE,
Investor. [190]

PETITIONERS' EXHIBIT No. 2

San Jose, California

April 30, 1941

This is to acknowledge that Willis Sherman Clayton, Jr., is now the owner of one-half of the undivided one-fourteenth interest in and to the balance of the assets, both real and personal, belonging to the Miller & Lux Syndicate as evidenced by the Receipt and Agreement dated March 10, 1926, between James A. Clayton & Co., as Operator, and W. S. Clayton, as Investor, a copy of which is attached hereto and made a part hereof, the same having been distributed to him by the Final Decree of Distribution in the Estate of Willis Sherman Clayton, Deceased, dated April 15, 1941.

[Corporate Seal]

JAMES A. CLAYTON & CO.,
By FRAZIER O. REID,
President.

San Jose, California

April 30, 1941

I hereby acknowledge that one-half of the undivided one-fourteenth interest in and to the balance of the assets, both real and personal, of the foregoing Syndicate was distributed to me by the Final

Decree of Distribution in the estate of Willis Sherman Clayton, Deceased, April 15, 1941.

WILLIS SHERMAN CLAYTON, JR.

San Jose, California

April 30, 1941

The undersigned as Operator named in said receipt and Agreement hereby accepts notice of the foregoing assignment.

[Corporate Seal]

JAMES A. CLAYTON & CO.,

By FRAZIER O. REED,

President. [191]

[Annexed agreement is identical with Petitioners' Exhibit 1 (pages 167-170) except the difference of the name of the investor.]

PETITIONERS' EXHIBIT No. 3

In consideration of the sum of Sixteen Thousand One Hundred Five (\$16,105.00) Dollars, lawful money of the United States of America, to us in hand paid by Florence G. Baldwin, the receipt whereof is hereby acknowledged, we hereby assign, grant, convey and transfer unto said Florence G. Baldwin all of our one-half interest in and to the undivided one-fourteenth interest in and to the balance of the assets, both real and personal belonging to the Miller & Lux Syndicate as evidenced by the Receipt and Agreement dated March 10, 1926,

between James A. Clayton & Co., as Operator and W. S. Clayton, as Investor, a copy of which is attached hereto and made a part hereof.

The interest hereby assigned, granted, conveyed and transferred to said Florence G. Baldwin was distributed to James Bradley Clayton by Final Decree of Distribution in the Estate of Willis Sherman Clayton, Deceased, dated April 15, 1941.

In Witness Whereof, the undersigned have hereunto subscribed their names as of April 30, 1941.

J. B. CLAYTON.

OLIVE A. CLAYTON.

Witnesses:

E. B. DONOVAN.

M. G. BOWDEN.

San Jose, California

April 30, 1941.

The undersigned, as Operator named in said Receipt and Agreement, hereby accepts notice of the foregoing assignment.

JAMES A. CLAYTON & CO.,

By FRAZIER O. REED,

President. [194]

[Annexed agreement is identical with Petitioners' Exhibit 1 (pages 167 to 170) except the difference of the name of the investor.]

PETITIONERS' EXHIBIT No. 4

In consideration of the sum of Twenty-two Thousand Three Hundred Nine and 68/100 (\$22,309.68) Dollars, lawful money of the United States of America, to me in hand paid by James A. Clayton & Co., the receipt whereof is hereby acknowledged, I hereby assign, grant, convey and transfer unto said James A. Clayton & Co. all of my one-half interest in and to the undivided one-fourteenth interest in and to the balance of the assets, both real and personal, belonging to the Miller & Lux Syndicate as evidenced by the receipt and agreement dated March 10, 1926, between James A. Clayton & Co. as Operator, and W. S. Clayton as Investor, a copy of which is hereto attached and made a part hereof.

The interest hereby assigned to said James A. Clayton & Co. was heretofore assigned by J. B. Clayton and Olive A. Clayton, his wife, to Florence G. Baldwin by Assignment dated April 30, 1941.

In Witness Whereof, the undersigned has hereunto subscribed her name as of June 9, 1941.

FLORENCE G. BALDWIN.

Witnesses:

M. R. GRAGG.

ANN L. LAULESS.

San Jose, California
June 9, 1941

The undersigned, as Operator named in said Receipt and Agreement, hereby accepts notice of the foregoing assignment.

JAMES A. CLAYTON & CO.,

By J. B. CLAYTON,
Vice President.

EXPLANATION

In consideration of this Assignment an adjustment of \$6204.68 was made with Mrs. Baldwin on the commission due from the sale to Elmer C. von-Glahn affecting land in Kings County. Said land is inundated and there is little likelihood of any collection being made for several years.

This Assignment affects one-half of one-fourteenth interest in the Miller & Lux Syndicate Agreement originally owned by W. S. Clayton, now deceased, and was appraised at \$16,105.00 for the Estate of said W. S. Clayton.

[Annexed agreement is identical with Petitioners' Exhibit 1 (pages 167 to 170) except the difference of the name of the investor.]

PETITIONERS' EXHIBIT No. 5

For value received, the receipt whereof is hereby acknowledge, I, George H. Osen, hereby assign, grant, convey and transfer unto myself, the said George H. Osen, and to my son, George A. Osen, in joint tenancy, and to the survivor of us, all of my undivided one-fourteenth interest in and to the balance of the assets, both real and personal, belonging to the Miller & Lux Syndicate as evidenced by the Receipt and Agreement dated March 10, 1926, between James A. Clayton & Co. as Operator

and George H. Osen as Investor, a copy of which is attached hereto and made a part hereof.

In Witness Whereof, I have hereunto subscribed my name February 17, 1941.

GEORGE H. OSEN.

Witnesses:

FRAZIER O. REED.

J. B. CLAYTON.

State of California,
County of Santa Clara—ss.

On this 18th day of February in the year 1941, before me, E. B. Donovan, a Notary Public in and for the County of Santa Clara, State of California, residing therein, duly commissioned and sworn, personally appeared George H. Osen, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal at my office in said County of Santa Clara, the day and year in this certificate first above written.

[Seal] E. B. DONOVAN,
Notary Public in and for the County of Santa Clara,
State of California.

San Jose, California
February 17, 1941

I hereby ratify, approve and confirm the fore-

going Assignment and agree to be bound by the terms of said Receipt and Agreement.

GEORGE A. OSEN.

San Jose, California

February 17, 1941

The undersigned, as Operator named in said Receipt and Agreement, hereby accepts notice of the foregoing Assignment from George H. Osen to George H. Osen and George A. Osen, in joint tenancy.

JAMES A. CLAYTON & CO.,

By FRAZIER O. REED,

President. [200]

[Annexed agreement is identical with Petitioners' Exhibit 1 (pages 167 to 170) except the difference of the name of the investor.]

PETITIONERS' EXHIBIT No. 6

In consideration of \$28,550.00 to me in hand paid by Arthur D. Curtner, the receipt whereof is hereby acknowledged, I hereby sell, assign and set over unto said Arthur D. Curtner, an undivided one-half of all my right, title and interest in and to the receipt and agreement for Fifty Thousand (\$50,000.00) Dollars dated March 10th, 1926, and entered into by James A. Clayton & Co. as Operator and Thos. Scoble, as Investor, a copy of which said agreement is attached hereto and made a part hereof, including all my right, title and interest in

and to all of the real and personal property, described in said agreement, as well as all money, notes, mortgages, trust deeds, contracts of sale and agreements of every kind which said Operator may have accepted for such portions of said real and personal property as has been heretofore sold or contracted to be sold and this sale is made subject to said agreement and subject to all of the acts of James A. Clayton & Co., the Operator named therein and of said M. E. Thomas mentioned in said agreement.

In Witness Whereof, I have hereunto subscribed by name this 13th day of December A.D., 1927.

THOS. SCOBLE.

I hereby ratify, approve and confirm the foregoing sale and agreement.

ALICE G. SCOBLE,

By THOMAS SCOBLE,

Her Attorney-in-Fact.

I hereby agree to comply with all of the terms and conditions contained in said receipt and in said agreement [203] therein referred to and hereby assume one-half of all of Thos. Scoble's responsibility under the same, or either of them, whether already accrued or which may hereafter accrue.

ARTHUR D. CURTNER.

In consideration of \$14,275.00 to me in hand paid by Harry H. Fitch, the receipt whereof is hereby acknowledged, I hereby sell, assign and set over unto said Harry H. Fitch, an undivided one-fourth of all my right, title and interest in and to the

receipt and agreement for Fifty Thousand (\$50,000.00) Dollars dated March 10th, 1926, and entered into by James A. Clayton & Co. as Operator and Thos. Scoble, as Investor, a copy of which said agreement is attached hereto and made a part hereof, including all my right, title and interest in and to all of the real and personal property, described in said agreement, as well as all money, notes, mortgages, trust deeds, contracts of sale and agreements of every kind which said Operator may have accepted for such portions of said real and personal property as has been heretofore sold or contracted to be sold and this sale is made subject to said agreement and subject to all of the acts of James A. Clayton & Co., the Operator named therein and of said M. E. Thomas mentioned in said agreement.

In Witness Whereof, I have hereunto subscribed my name this 13th day of December A. D. 1927.

THOS. SCOBLE.

I hereby ratify, approve and confirm the foregoing sale and agreement.

ALICE G. SCOBLE,

By THOMAS SCOBLE,

Her Attorney-in-Fact.

I hereby agree to comply with all of the terms and conditions contained in said receipt and in said agreement therein [205] referred to and hereby assume one-fourth of all of Thos. Scoble's responsibility under the same, or either of them, whether already accrued or which may hereafter accrue.

HARRY H. FITCH.

In consideration of \$14,275.00 to me in hand paid by A. Leroy Parkinson, the receipt whereof is hereby acknowledged, I hereby sell, assign and set over unto said A. Leroy Parkinson, an undivided one-quarter of all my right, title and interest in and to the receipt and agreement for Fifty Thousand (\$50,000.00) Dollars dated March 10th, 1926, and entered into by James A. Clayton & Co. as Operator and Thos. Scoble as Investor, a copy of which said agreement is attached hereto and made a part hereof, including all my right, title and interest in and to all of the real and personal property, described in said agreement, as well as all money, notes, mortgages, trust deeds, contracts of sale and agreements of every kind which said Operator may have accepted for such portions of said real and personal property as has been heretofore sold or contracted to be sold and this sale is made subject to said agreement and subject to all of the acts of James A. Clayton & Co., the Operator named therein and of said M. E. Thomas mentioned in said agreement.

In Witness Whereof, I have hereunto subscribed my name this 13th day of December A. D. 1927.

THOS. SCOBLE.

I hereby ratify, approve and confirm the foregoing sale and agreement.

ALICE G. SCOBLE,

By THOMAS SCOBLE,

Her Attorney-in-Fact.

I hereby agree to comply with all of the terms and conditions [207] contained in said receipt and in said agreement therein referred to and hereby assume one-quarter of all of Thos. Scoble's responsibility under the same, or either of them, whether already accrued or which may hereafter accrue.

A. LEROY PARKINSON.

[Annexed agreements are identical with Petitioners' Exhibit 1 (pages 167 to 170) except the difference of the names of the investors]

PETITIONERS' EXHIBIT No. 7

[Letterhead San Jose Hardware Co.]

San Jose, California

August 10th, 1928

James A. Clayton & Co.
34 West Santa Clara St.
San Jose, California.

Gentlemen:—

We observe you still carry our interest in the M. & L. Syndicate in the name of W. L. Holmes. When we incorporated our Attorneys Rea & Caldwell should have had this transferred to San Jose Hardware Co.

Kindly change this on your books. By so doing you will oblige.

Yours truly,

SAN JOSE HARDWARE CO.,

A. E. HOLMES,

Pres.

W. L. HOLMES,

AEH:DI [213]

Secty.

San Jose, California

October 17th, 1928

James A. Clayton & Co.,
34 W. Santa Clara St.,
San Jose, Calif.

Gentlemen:—

You are hereby authorized and instructed to transfer and set over unto the San Jose Hardware Company all my right, title and interest in and to the M. E. Thomas (Miller & Lux, Incorporated) Syndicate.

The transfer should have been made as of August 10th, 1928.

W. L. HOLMES. [214]

PETITIONERS' EXHIBIT No. 8

398 South 15th Street

San Jose, California

July 15th, 1931

James A. Clayton Company,
San Jose, California.

Dear Frazier:

Reference Miller and Lux Syndicate:

Your records will show that for a one fourteenth interest I paid to you \$40,000 and Mr. A. A. Hapgood, \$10,000 and your disbursements have been on that basis, that is, four fifths of one fourteenth interest have been paid to me and one fifth to Mr. Hapgood.

However, your books apparently do not show Mr. Hapgood in the matter and your statements do show a full one fourteenth of what you term dividends as paid to me.

This is to instruct, request and urge that you change your accounts so as to show that Mr. Hapgood *has one fifth of one fourteenth interest in the Syndicate and that you make future disbursements in accordance.

Kindly acknowledge and thank you for your prompt compliance.

Yours truly,

E. SHILLINGSBURG.

*& of course, that I have four fifths of a fourteenth interest.

SHILLY.

P.S. Isn't there a refund due us from the Internal Rev. Dept. for one of the years we overpaid? [215]

PETITIONERS' EXHIBIT No. 9

“Personal San Jose, Calif., August 14, 1931

Mr. Frazier O. Reed, President

Jas. A. Clayton & Co.

34 West Santa Clara Street

San Jose, Calif.

Dear Mr. Reed:

Mr. Shillingsburg advises that he has had a talk with you in reference to showing my name in the records of the Miller and Lux Syndicate as owner of one fifth of one fourteenth portion, and that you advised him that this could only be done by considerable red tape.

If this is the case I am wondering what complications would arise with the demise of either Mr. Shillingsburg or myself, and if we would not be involved in considerable trouble and expense.

I was disappointed at the first that my name was not included especially after you did include Mr. Fitch who paid in about the same as myself.

As it will probably be some time before this Syndicate will be terminated I will appreciate it very much if you will arrange to make the change in the records at your earliest convenience.

Yours truly,

A. A. HAPGOOD.

(Letterhead of Southern Pacific Co. omitted)

PETITIONERS' EXHIBIT No. 10

In consideration of Ten Thousand (\$10,000.00) Dollars to me in hand paid by A. A. Hapgood, the receipt whereof is hereby acknowledged, I hereby sell, assign and set over unto said A. A. Hapgood an undivided one-fifth of all my right, title and interest in and to the receipt and agreement for Fifty Thousand (\$50,000.00) Dollars dated March 10th, 1926 and entered into by James A. Clayton & Co. as Operator and E. Shillingsburg, as Investor, a copy of which said agreement is attached hereto and made a part hereof including an undivided one-fifth of all my right, title and interest in and to all of the real and personal property, described in said agreement, as well as all money, notes, mortgages, trust deeds, Contracts of Sale and Agreements of every kind which said Operator may have accepted for such portions of said real and personal property as may have been heretofore sold or contracted to be sold and this sale is made subject to said agreement and subject to all of the acts of James A. Clayton & Co., the Operator named therein and of said M. E. Thomas mentioned in said agreement.

In Witness Whereof, I have hereunto subscribed by name this 26th day of May, A. D. 1926.

E. SHILLINGSBURG.

I hereby ratify, approve and confirm the foregoing sale and agreement.

NELLIE SHILLINGSBURG.

I hereby agree to comply with all of the terms and conditions [217] contained in said receipt and in said agreement therein referred to and hereby assume one-fifth of all of E. Shillingsburg's responsibilities under the same, or either of them, whether already accrued or which may hereafter accrue.

A. A. HAPGOOD.

James A. Clayton & Co. is hereby requested to take notice that I have on this 26th day of May, 1926, sold, assigned and set over unto A. A. Hapgood an undivided one-fifth of all my right, title and interest in and to the receipt and agreement for Fifty Thousand (\$50,000.00) Dollars dated March 10th, 1926 and entered into by James A. Clayton & Co., as Operator, and E. Shillingsburg, as Investor, which said agreement affects those certain lands and interests, in the Counties of Santa Clara, San Benito, and Santa Cruz, California, purchased by me and thirteen other syndicate members in the name of M. E. Thomas from Miller & Lux, Incorporated.

E. SHILLINGSBURG.

I hereby ratify, approve and confirm the foregoing notice.

NELLIE SHILLINGSBURG.

[Annexed agreement is identical with Petitioners' Exhibit 1 (pages 167 to 170) except the difference of the name of the investor.]

Statement of Gross and Net Income from Farming and Rents 1926 to 1940, Inclusive, as
Shown by Bloomfield Ranch Partnership Returns of Income

Year	Farming A			Rents B		
	Gross Receipts	Expenses	Profit or Loss	Rents	Commissions	Net
1926.....	\$ 1,562.94	\$ 10,877.77	\$ 9,314.83	\$ 34,041.00	\$ 1,327.60	\$ 32,713.40
1927.....	7,617.02	32,519.98	24,902.96			4,842.15
1928.....	23,131.31	36,867.36	13,736.05	14,788.17	752.98	14,035.19
1929.....	30,655.90	39,636.07	8,980.17	32,304.69	1,602.75	30,701.94
1930.....	28,769.77	24,358.75	4,411.02	35,870.31	2,069.87	33,800.44
1931.....	14,325.72	12,740.50	1,585.22	27,977.37	1,398.85	26,578.52
1932.....	1,840.52	13,418.49	11,577.97	25,270.24	*4,080.39	21,189.85
1933.....	3,086.20	10,085.39	6,999.19			33,825.54
1934.....	21,500.80	9,414.81	12,085.99	39,008.90	*3,194.72	35,814.18
1935.....	4,356.02	11,533.66	7,177.64			34,487.13
1936.....	8,790.98	11,768.27	2,977.29	58,929.21	2,922.81	56,006.40
1937.....	7,108.59	18,559.18	11,450.59	52,695.95	2,655.91	*50,140.04
1938.....	5,825.36	12,006.74	6,181.38	39,142.97	1,957.01	37,185.96
1939.....	8,182.50	13,435.72	5,253.22	45,104.53	2,256.93	42,847.60
1940.....	8,806.07	10,733.04	1,926.97	50,929.57	2,546.29	48,383.28
	\$175,559.70	\$267,955.73	\$ 92,396.03 (Net Loss)	\$456,062.91	\$ 26,766.11	\$502,551.62
				Less Loss on Farming		92,396.03
						\$410,155.59
				Less Taxes Paid per Sheet attached		224,722.76
						\$185,432.83

*Other Items

[Italic figures—Red on original copy.]

Statement of Interest Received, Profits from Sale of Real Estate, Miscellaneous Items and Total Gross Income as
Shown by Bloomfield Ranch Partnership Returns of Income

Year	D		E	
	Interest	Profit from Sale of Real Estate	Miscellaneous	Total
1926.....	\$ 10,141.84	\$ 61,268.38	\$ 2,989.83	\$ 97,798.62
1927.....	14,150.37	6,678.23	2,954.52	3,722.31
1928.....	14,338.68	44,190.88	1,996.13	60,824.83
1929.....	20,168.27	149,106.12	2,889.84	193,886.00
1930.....	17,408.08	53,939.75	3,638.62	113,197.91
1931.....	14,672.86	3,372.27	1,344.50	47,553.37
1932.....	10,406.38	7,644.66	951.57	13,325.17
1933.....	13,948.55		158.31	40,933.21
1934.....	9,306.98	607.91	1,012.95	57,612.19
1935.....	11,999.98	127.36	480.45	39,917.28
1936.....	12,164.27	733.07	420.14	66,346.59
1937.....	3,284.35		327.63	42,301.43
1938.....	2,121.76	272.08	88.55	33,486.97
1939.....	1,247.19	331.36	280.93	39,453.86
1940.....	1,043.29			47,499.60
	\$156,402.85	\$311,766.93	\$ 19,533.97	\$897,859.34
		Less Taxes Paid.....		224,722.76
				\$673,136.58

Statement of Taxes Paid During 1926 to 1940,
Inclusive, as Shown by Bloomfield Ranch Part-
nership Returns of Income

Year	
1926	\$ 30,147.17
1927	24,782.72
1928	20,189.50
1929	20,993.33
1930	24,862.85
1931	8,054.96
1932	14,174.46
1933	10,130.24
1934	8,713.31
1935	12,516.44
1936	8,618.05
1937	10,659.98
1938	9,604.41
1939	10,770.33
1940	10,505.01
Total	\$224,722.76

PETITIONERS' EXHIBIT No. 13

Investment and Sales

Sales to and including 1940..... \$1,474,243.06

Purchase Price

Investors contributed	\$700,000.00	
Borrowed from Bank of Italy	350,000.00	
Borrowed from Miller & Lux	235,000.00	1,285,000.00

Gain to and including 1940.....	\$ 189,243.06
Sales in 1942.....	10,850.00
Sales in 1942.....	3,000.00
Sales in 1943.....	20,435.00
Sales in 1944.....	318,315.00

Total Gain 1926-1944, inclusive.... \$ 541,843.06

1/14th equal \$ 38,703.07 plus

About 1,500 acres remain unsold.

ACCEPTED

UNITED STATES

PARTNERSHIP RETURN OF INCOME 1940

(To be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1940

or fiscal year beginning _____, 1940, and ended _____, 1941
(File this return not later than the 15th day of the 3d month following the close of the taxable year)

PRINT FULLY NAME AND BUSINESS ADDRESS OF THE ORGANIZATION

BLOOMFIELD RANCH

34 WEST SANTA CLARA STREET

SAN JOSE SANTA CLARA CALIFORNIA

Business or Profession RANCH

Do Not Use These Spaces

File Code

Serial No.

District

(Date Received)

RECEIVED

MAR 7 1941
COLLECTOR
OF INT. REV.
FIRST DIST. CALIF.

GROSS INCOME

1. Gross receipts from business or profession

2. Less cost of goods sold:

- (a) Inventory at beginning of year
- (b) Merchandise bought for sale
- (c) Cost of labor, supplies, etc.
- (d) Total of lines (a), (b), and (c)
- (e) Less inventory at end of year

3. Gross profit (or loss) from business or profession (item 1 minus item 2)

4. Income (or loss) from other partnerships, syndicates, pools, etc. (state separately name, address, and amount):

5. Interest on bank deposits, notes, corporation bonds, etc. (except interest to be reported in item 6): \$1098.15 Collection Expense \$54.86

6. Interest on tax-free covenant bonds upon which a Federal income tax was paid at source

7. Interest on Government obligations, etc. (from line 6b, Schedule A)

8. Rents \$50929.57 Less Commissions \$2546.29

9. Royalties

10. Net gain (or loss) from sale or exchange of property other than capital assets (from Schedule B)

11. Dividends

12. Other income (state nature of income)

13. Total income in items 3 to 12 (enter net taxable income in Schedules A and C)

DEDUCTIONS

14. Salaries and wages (do not include compensation for partners)

15. Rent

16. Repairs

17. Interest on indebtedness (explain in Schedule F)

18. Taxes (explain in Schedule C)

19. Losses by fire, storm, shipwreck, or other casualty, or theft (submit schedule, see Instruction 19)

20. Bad debts (explain in Schedule D)

21. Depreciation (explain in Schedule E)

22. Depletion of mines, oil and gas wells, timber, etc. (submit schedule, see Instruction 22)

23. Other deductions authorized by law (explain in Schedule F)

24. Total deductions in items 14 to 23

25. Ordinary net income (item 13 minus item 24)

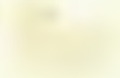
26. Net short-term capital gain (or loss) (from line 1, column 4, Summary, Schedule H)

27. Net long-term capital gain (or loss) (from line 2, column 4, Summary, Schedule H)

NOTE—In order that this return may be accepted as meeting the requirements of the Internal Revenue Code, the data called for herein must be set forth FULLY and CLEARLY.

RECEIVED
MAR 20 1941
301 - SAN JOSE

THE TAX COURT OF THE U. S.
DIV. 13 DOCKET 5007
ADMITTED IN EVIDENCE
48363-28
JUL 10 1945
PETITIONER'S EXHIBIT A
RESPONDENT'S



BLOOMFIELD RANCH

1940

SCHEDULE 2 (c)

Labor	\$ 3934.89
Commissions	398.18
Insurance	317.85
Miscellaneous Expense	375.89
Light and Power	108.42
Drainage	1200.00
Supplies	4023.11
Tractor Hire	296.25
Hauling	78.45
	<u>\$10733.04</u>

SCHEDULE F DEPRECIATION

KIND OF PROPERTY	DATE ACQUIRED	COST	DEPRECIATION ALLOWED	BALANCE COST	REMAINING LIFE	DEPRECIATION 1940
Pumping Plant and Pumps	Various	\$7439.96	\$3135.78	\$4304.18	Various	\$ 743.99
Ditches	Feb. 1938	1031.38	75.69	955.69	23 - 2	41.25
Wells	Various	17121.91	11129.92	5992.09	Various	1525.35
Buildings	Various	27068.99	18037.17	9031.82	Various	1333.69
Pipe Line	May 1935	981.04	224.76	756.28	15 1/2 yr.	49.05
Power Lines, Motors, Equipment, Etc.	Various	3416.90	1534.17	1882.73	Various	341.63
Surface Pipe	June 1940	646.84		646.84	5 yrs.	<u>64.68</u>
						\$4099.64

Total net short-term capital gain or loss (enter in line 1, column 2, of summary below)

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 24 MONTHS

Total net long-term capital gain or loss (enter in line 2, column 2, of summary below)

1. Classification	2. Net gain or loss to be taken into account from column 10, above		3. Net gain or loss to be taken into account from other partnerships and "common trust funds"		4. Total net gain or loss to be taken into account in columns 2 and 3 of this summary	
	Gain	Loss	Gain	Loss	Gain	Loss
1. Total net short-term capital gain or loss (refer to column 3, Schedule I, amount of gain or loss shown in column 1).	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2. Total net long-term capital gain or loss (refer to column 4, Schedule I, amount of gain or loss shown in column 1).	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

If any of the above items were acquired by you other than by purchase, explain fully how acquired:

Name and address of organization

Apostoli

BLOOMFIELD RANCH

1940

PARTNERS' SHARE OF INCOME

	NAME	ADDRESS	PART	AMOUNT
(1)	Florence G. Baldwin ✓ /	Rancho Matilija, R. R. No. 2, Ojai, California.	1/14	\$ 2,250.96
(2)	J. D. Chase ✓ 2	Commercial Building, San Jose, California.	1/14	2,250.86
(3)	Anna B. Clayton, Executrix 3	171 Sunol Street, San Jose, California.	1/14	2,250.86
(4)	James A. Clayton & Company ✓	34 W. Santa Clara Street, San Jose, California.	1/14	2,250.86
(5)	Arthur D. Curtner ✓ 5	c/o Richmond Chase Company, San Jose, California.	3/28	3,376.28
(6)	Edith K. Dorrance ✓	629 Hicks Avenue, San Jose, California.	1/14	2,250.86
(7)	Rose L. Fitch and Margaret F. Coykendall ✓ 7	831 Whipple Avenue, Redwood City, California.	1/56	562.72
(8)	A. A. Hapgood ✓ 8	48 South 16th Street, San Jose, California.	1/70	450.17
(9)	H. S. Hersman ✓ 9	Gilroy, California.	1/14	2,250.86
(10)	George H. Osen ✓ 10	230 North First Street, San Jose, California.	1/14	2,250.86
(11)	A. Leroy Parkinson ✓ "	158 South 8th Street, San Jose, California.	5/56	2,813.56
(12)	Estate A. R. Patrick ✓ 12	c/o S. C. Cornett, Executor, Salinas National Bank Bldg., Salinas, California.	1/14	2,250.86
(13)	San Jose Hardware Company ✓ 13	62 West San Fernando Street, San Jose, California.	1/14	2,250.86
(14)	Nellie Shillingsburg ✓ 14	398 South 15th Street, San Jose, California.	4/70	1,800.68
(15)	Ellen Weinstein, Executrix of the Estate of Samuel Weinstein, Deceased ✓ 15	1565 Green Street, San Francisco, California.	1/14	2,250.86

101, 110, 121

Schedule J.—PARTNERS' SHARES OF INCOME AND CREDITS. (See instruction 35)

1. Name and address of each partner (Indicate partnership address) Where origin of partner or member is filed in another collection district, specify district. If the full time of any partner was not devoted to the business, the percentage of time devoted must be stated.	2. Ordinary net income has been based on Government obligations, etc. (Form 23, page 1, minus item 7, page 1, and dividends included in item 12, page 1)	3. Net short-term gains (or loss) from sale or discharge of capital assets (Form Schedule 14, Summary, line 1, column 4)	4. Net long-term gains (or loss) from sale or discharge of capital assets (Form Schedule 14, Summary, line 2, column 4)
(a)	\$	\$	\$
(b)			
(c)			
(d)			
(e)			
(f)			
Totals	\$	\$	\$

CONTINUATION OF SCHEDULE J

5. Use later corresponding to above to identify partner	Partially tax-exempt				9. Exempt income	10. Charitable contributions (Form Schedule 1)	11. Federal income tax paid at source (2 percent of item 6, page 1)	12. Income and profits taxes paid to a foreign country or United States possession
	6. Wholly tax-exempt obligations (Form 10, (a), (b), (c), and (d) of Schedule A)		7. United States Savings Bonds and Treasury Bonds (Form 10, Schedule A)					
	Principal	Interest	Principal	Interest	Principal	Interest		
	\$	\$	\$	\$	\$	\$	\$	\$
Totals	\$	\$	\$	\$	\$	\$	\$	\$

QUESTIONS

1. Date of organization 1926
2. Nature of organization (partnership, syndicate, pool, joint venture, etc.) Partnership
3. Was a return filed for preceding year? Yes. If so, to which collector's office was it sent? First California
4. Check whether this return was prepared on the cash ☒ or accrual ☐ basis.
5. State whether inventories at the beginning and end of the taxable year were valued at (a) cost, or (b) cost or market, whichever is lower lower

- If any other basis is used, attach statement describing basis full state why used and the date inventory was last reconciled with stock.
6. Did the organization at any time during the taxable year or directly or indirectly any stock of a foreign corporation or personal holding company, as defined in section 501 of the Internal Revenue Code? (Answer "Yes" or "No") No. If answer is "Yes," attach schedule required by Instruction 1.
 7. Was return of information on Forms 1096 and 1099 filed for calendar year 1940? (See Instruction H) Yes

AFFIDAVIT (See instruction D)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return, made in good faith, for the accounting period stated, pursuant to the Internal Revenue Code and the regulations issued under authority thereof.

Subscribed and sworn to before me this 4th day of March, 1941

E. B. Danovaw

Notary Public in and for the State of California

(If this return was prepared for or by some other person, the following affidavit must be executed)

AFFIDAVIT (See instruction D)

I/we swear (or affirm) that I/we prepared this return for the organization named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income of the person for whom the return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this

25 day of February, 1941

Frances Langdon

(Signature and title of officer administering oath)

Notary Public in and for the County of



U. S. GOVERNMENT PRINTING OFFICE 16-17717

James L. Danovaw
7777 Santa Clara St. San Diego
(Address of partner or member)

(Signature of person preparing the return)

(Signature of person preparing the return)

(Name of firm or employer, if any)

RESPONDENT'S EXHIBIT "B"

Breakdown of "Gross Receipts," "Supplies" and
"Labor," items appearing on the 1940 return
of Bloomfield Ranch

Bloomfield Ranch—1940

Supplies

Seed	\$1,750.00
Manure	169.71
Liq. Phos. Acid and Sul. Amn.....	518.97
Gaviota Fruiting	160.81
Fertilizer	1,205.56
Squirrel Poison	21.75
Fruitone	5.15
Tomato Plants	30.00
Tomato Seed	30.00
Rock Fill	9.79
Chappell and Sons.....	59.75
Paint	18.46
Martin Hardware	43.16
	<hr/>
	\$4,023.11
	<hr/>

Labor

J. E. Ayer	\$2,400.00
F. Silacci	13.00
Bradley Ranch (for drying prunes).....	22.50
Kumagai	99.90
M. Galer	24.30
Donohue	91.19
H. O. Galer	343.40
W. Silacci	157.50
Lavers	5.00
J. H. Silva	225.79
H. Allemand	132.00
Bontodelli	27.36
Wolfe	25.47
Clearing and Burning Carnadero Creek.....	214.50
Paid to Butterfield and Ayer for casual labor.....	152.98
	<hr/>
	\$3,934.89
	<hr/>

Income

Sale of seed—fenugreek.....	\$ 832.00
1939 Beet Bonus—United States Government.....	6,687.97
Prunes—United States Government.....	820.20
Sale of hay	167.21
United States Government Soil Conservation — 1939 Leases	252.57
1938 Prunes	18.12
Sale of straw.....	28.00
	<hr/>
	\$8,806.07
	<hr/>

RESPONDENT'S EXHIBIT "C"

Statement of Farming Expenses for 1927 to 1930,
Inclusive, and for 1937, as Shown by Bloomfield
Ranch Partnership Returns of Income

Year	Expenses		Total
1927	General Expense	\$ 429.09	
	Power	870.56	
	Insurance	698.60	
	Labor	5,982.93	
	Supplies	2,297.22	
	Squirrel poison	147.32	
	Discing, cultivating & plowing..	14,684.12	
	Hauling	1,327.12	
	Harvesting	593.00	
	Cleaning Barley	345.55	
	Sowing	64.00	
	Pruning	318.00	
	Board for Help	97.97	
	Threshing	3,912.40	
	Telephone	45.30	
	Seed	705.90	\$32,519.98
		<hr/>	

Year	Expenses		Total
1928	Labor	\$ 9,866.52	
	Telephone and General Expenses	312.20	
	Insurance	1,398.36	
	Commission	1,030.78	
	Discing	3,179.27	
	Plowing	5,188.57	
	Sacks and Bags.....	2,375.38	
	Seeding	409.75	
	Pruning	300.00	
	Harrowing	515.73	
	Straw	1,050.00	
	Spray	128.30	
	Binding	701.80	
	Threshing	2,589.00	
	Harvesting	707.50	
	Board for Help	422.25	
	Seed	2,166.30	
	Power	406.71	
	Supplies and Repairs	750.14	
	Squirrel Poison	66.78	
	Attorney fees	50.00	
	Gravel	196.00	
	Recleaning Seeds	2,058.97	
	Hauling	997.05	\$36,967.36
1929	General Expenses	\$ 266.25	
	Telephone	168.65	
	Labor—plowing, discing, etc.....	24,490.84	
	Power	289.17	
	Insurance	3,595.07	
	Commission	1,437.53	
	Hauling	1,584.15	
	Seed	1,923.99	
	Supplies	4,933.19	
	Repairs	947.23	\$39,636.07
1930	Labor	\$11,061.15	
	Insurance	1,324.90	
	Supplies	3,629.41	
	General Expenses	698.40	
	Commissions	1,530.74	
	Light and Power.....	318.15	
	Automobile Expense	216.00	
	Attorney fees	5,580.00	\$24,358.75

Year	Expenses		Total
1937	Light and Power.....	\$ 173.70	
	Ranch Supplies	3,305.23	
	Chamber of Commerce dues.....	50.00	
	Hauling	295.60	
	Commissions	330.43	
	General Expense	352.98	
	Insurance	900.08	
	Labor	13,151.16	\$18,559.18

RESPONDENT'S EXHIBIT "D"

Statement showing total Disbursements to Investors

To each unit of the Bloomfield Group there was returned the original capital invested and the profits arising from sales, rents, farming operations, etc., as follows (Letter Clayton & Co., May 31, 1945):

Date of Distribution	Amount of Distribution
January 19, 1928.....	\$4,000.00
August 7, 1928	1,500.00
January 3, 1929.....	2,000.00
April 23, 1929.....	1,000.00
July 3, 1929.....	4,000.00
September 30, 1929.....	1,000.00
November 8, 1929.....	6,000.00
February 18, 1930.....	7,500.00
August 22, 1930.....	2,000.00
December 1, 1930.....	1,500.00
December 30, 1930.....	750.00
January 16, 1931.....	2,000.00
March 30, 1931.....	1,000.00
September 25, 1931.....	1,000.00
March 4, 1932.....	2,000.00
January 15, 1934.....	2,000.00
February 27, 1935.....	3,000.00
February 17, 1935.....	2,000.00
February 12, 1936.....	7,000.00
November 17, 1936.....	2,500.00
December 18, 1936.....	2,000.00
June 28, 1937.....	2,000.00

Date of Distribution	Amount of Distribution
December 9, 1937.....	\$ 2,000.00
February 8, 1938.....	2,000.00
December 28, 1938.....	1,000.00
March 7, 1939.....	500.00
December 28, 1939.....	2,000.00
December 17, 1940.....	2,000.00
December 27, 1941.....	2,000.00
December 22, 1942.....	2,000.00
August 24, 1943.....	2,000.00
December 29, 1944.....	25,000.00

Total	\$98,250.00
Total paid to 14 Units.....	\$1,375,500.00

RESPONDENT'S EXHIBIT "F"

Items shown in column headed "Miscellaneous" in Petitioner's Exhibit 12 include the following items as they appear in Income Tax Returns for the years 1926-1939:

	Items shown in Income Tax Returns	Items shown in Exhibit 12
1926 Taxes collected	\$ 1,657.69	
Miscellaneous items	1,332.14	\$ 2,989.83
1927 Taxes	2,714.45	
Miscellaneous Income	240.07	2,954.52
1928 Insurance	271.24	
Miscellaneous	1,724.89	1,996.13
1929 Taxes	2,047.49	
Miscellaneous Income	842.35	2,889.84
1930 Taxes	1,703.54	
Miscellaneous Income	1,935.54	3,638.62
1931 Miscellaneous Income	421.24	
Taxes	923.26	1,344.50
1932 Taxes	11.05	
Insurance	244.80	
Miscellaneous Income	695.72	951.57

	Items shown in Income Tax Returns	Items as shown in Exhibit 12
1933 · Miscellaneous		\$ 158.31
1934 Miscellaneous	397.27	
Insurance	305.52	
Taxes	56.96	
Recording fees	253.20	1,012.95
<hr/>		
1935 Miscellaneous Income		480.45
1936 Miscellaneous Income		420.14
1937 Miscellaneous Income		327.63
1938 Refunds		88.55
1939 Refunds		280.93
<hr/>		
Total		\$19,533.97

In The Tax Court of the United States

Docket No. 5007

BLOOMFIELD RANCH, et al.,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

STIPULATION OF FACTS

It is stipulated that:

Miller & Lux, Incorporated, a corporation (hereinafter sometimes called Miller), owned 21 separate parcels of land, substantially all ranches or ranch lands in the Counties of Santa Clara, San Benito, and Santa Cruz, California. The tracts were widely scattered, the distance between the most northerly

tract and the most southerly tract is about 14 miles, and the distance between the most westerly tract and the most easterly tract is about 13 miles. The 21 ranches contained about 27,500 acres, consisting of lands suitable for various purposes about as follows (though they had not all been used for those purposes): hay lands, about 1,500 acres; grain lands, about 3,000 acres; vegetable lands, about 2,500 acres; orchards, about 200 acres; orchard land, about 700 acres; vineyard land, about 200 acres; flat pasture, about 300 acres; hill pasture, about 14,000 acres; forest lands, about 3,100 acres; river bottoms, about 400 acres; swamp and overflowed lands, about 1,400 acres; industrial lands, about 30 acres; land in the City [235] of Gilroy, about 42 acres; and land in roads, about 60 acres. These properties were sometimes known and referred to as the Bloomfield Ranch. Miller operated the properties as one going concern, on which it handled thousands of cattle and produced much of the feed consumed by the cattle, maintained substantial feed yards upon the properties and fattened cattle there, and frequently employed as many as 200 men to attend to the cattle, farming operations and other work upon or connected with the various properties.

It became known at about the beginning of the year 1926 that these properties were for sale as a whole.

James A. Clayton & Co. (hereinafter sometimes called Clayton) is a corporation, organized under the laws of the State of California, in the year 1903, and having its principal place of business in San

Jose, Santa Clara County, in said state. It is engaged in and doing business as real estate agent and broker. The business was founded by James A. Clayton in 1867. About 1880 a partnership was organized, consisting of James A. Clayton and his two sons. Thereafter, the company was known as James A. Clayton & Co. and did business in San Jose as real estate agent and broker until the organization in 1903 of said corporation, which ever since then has been and is now carrying on the same business.

Clayton found the original investors in the Miller properties, each of whom, together with Clayton, contributed \$50,000 for that purpose. They were:

Florence G. Baldwin,

John R. Chace, also known as J. R. Chace,

Willis S. Clayton, also known as Willis Sherman Clayton, and as W. S. Clayton, [236]

James A. Clayton & Co.,

Arthur D. Curtner, also known as A. D. Curtner,

John P. Dorrance, also known as J. P. Dorrance,

Hugh S. Hersman, also known as H. S. Hersman,

George H. Osen, also known as Geo. H. Osen,

Alfred L. Parkinson, also known as A. Leroy Parkinson, and as A. L. Parkinson,

Andrew R. Patrick, also known as A. R. Patrick,

Warren L. Holmes, also known as W. L. Holmes,

Thomas Scoble, also known as Thos. Scoble,
Elias Shillingsburg, also known as E. Shill-
ingsburg, and

Samuel Weinstein.

The following changes in the investors' interests, and no other, have been made since the original agreements were issued:

(a) John R. Chace died on September 2, 1931. His interest was distributed to his son John Derrol Chace, who is also known as J. D. Chace.

(b) Willis S. Clayton died on August 23, 1940. His interest was distributed one-half to his son Willis Sherman Clayton, Jr., and one-half to his son James Bradley Clayton, who transferred his interest to another of the investors, Florence G. Baldwin, his cousin, who transferred it to James A. Clayton & Co., another of the investors.

(c) John P. Dorrance died on March 9, 1928. His interest was distributed to Edith Kirk Dorrance, his widow, who thereafter died and her interest was distributed to John Kirk Dorrance, their son. [237]

(d) George H. Osen, on February 17, 1941, transferred his interest to himself and George A. Osen, his son, as joint tenants. George A. Osen thereafter died, and George H. Osen, by right of survivorship, now owns the entire original interest.

(e) Andrew R. Patrick died on May 20, 1935. His estate is still in probate in Monterey County, California. S. C. Cornett, who is also known as Sigurd C. P. Cornett, is the duly appointed, qualified and acting executor of his will.

(f) Warren L. Holmes, on August 10, 1928, transferred his interest to San Jose Hardware Company, a corporation, which was owned by him and his father.

(g) Thomas Scoble, on December 13, 1927, transferred to another of the investors, Arthur D. Curtner, a one-half of his one-fourteenth interest, and to A. Leroy Parkinson, another of the investors, a one-fourth of said interest, and to Harry H. Fitch, who was a partner, in the automobile business, of Investors George H. Osen and Arthur D. Curtner, a one-fourth of his interest. Thereafter, said Harry H. Fitch died, and his one-fourth of said one-fourteenth interest was distributed to Rose L. Fitch, his widow, and Margaret F. Coykendall, their daughter, share and share alike.

(h) E. Shillingsburg transferred on May 26, 1926, to A. A. Hapgood, also known as Alfred A. Hapgood, with whom he had been long associated in business investments, an undivided one-fifth of his undivided one-fourteenth interest. E. Shillingsburg died on January 18, 1932, and one-half of the remaining four-fifths of his one-fourteenth interest was distributed to his widow, Nellie Shillingsburg. The other one-half of said remaining four-fifths of said one-fourteenth interest was distributed to said Nellie Shillingsburg for and during her natural life, to use the rents, issues and profits thereof, and at her death to go to her daughters Anne Thompson, Margaret Leaman and Sarah Shillingsburg (who is now Sarah Shillingsburg Barry), share and share alike.

(i) Samuel Weinstein died on September 26, 1938. His estate is still in probate in the City and County of San Francisco, California. Ellen Weinstein is the duly appointed, qualified and acting executrix of his will.

The investors and their respective interests in the investment now are:

James A. Clayton & Co., $1/14$ plus $1/2$ of $1/14$;
Florence G. Baldwin $1/14$;
John Derrol Chace $1/14$;
Willis Sherman Clayton, Jr., $1/2$ of $1/14$;
Arthur D. Curtner $1/14$ plus $1/2$ of $1/14$;
John Kirk Dorrance $1/14$;
Rose L. Fitch $1/8$ of $1/14$;
Margaret F. Coykendall $1/8$ of $1/14$;
Hugh S. Hersman $1/14$;
Alfred A. Hapgood $1/5$ of $1/14$;
George H. Osen $1/14$;
Alfred L. Parkinson $1/14$ plus $1/4$ of $1/14$;
Estate of Andrew R. Patrick, deceased, $1/14$;
San Jose Hardware Co., $1/14$;
Nellie Shillingsburg $1/2$ of $4/5$ of $1/14$; [239]
Anne Thompson, Sarah Shillingsburg Barry
and Margaret Leaman, $1/2$ of $4/5$ or $1/14$ subject
to life estate of Nellie Shillingsburg, their
mother;
Estate of Samuel Weinstein, deceased, $1/14$.

Clayton, with the sum of \$700,000 contributed by the investors as aforesaid, together with \$350,000 borrowed from the Bank of Italy (now Bank of America N. T. & S. A.), and \$235,000 borrowed

from Miller & Lux, Incorporated, bought the Bloomfield Ranch properties, taking title thereto by three deeds from Miller & Lux, Incorporated, to M. E. Thomas, each dated March 3, 1926, each conveying the land in only one, and a different one, of said three respective counties. The moneys were so borrowed as above mentioned upon notes signed by M. E. Thomas, secured by appropriate deeds of trust of Bloomfield Ranch lands, one to the Bank of Italy on a portion of the lands, and the other to Miller & Lux, Incorporated, on a different portion of the lands, and the three deeds and two deeds of trust were recorded in the respective counties, in which the lands affected by them are situated, on March 10, 1926. M. E. Thomas, in whose name the title was taken, is a single woman who was then and ever since has been and now is employed by Clayton. Title was so taken in her name as a convenience. She has no actual interest in the property.

Clayton began selling the lands as soon as they were purchased. Sales were made from 1926 to 1940, inclusive, as follows: [240]

Year	Sales	Acres	Received
1926	44	11,489.700	\$ 635,920.90
1927	33	6,757.437	344,568.96
1928	21	4,430.870	149,822.00
1929	22	447.969	180,308.70
1930	15	1,702.714	141,705.50
	<hr/>	<hr/>	<hr/>
	135	24,828.690	\$1,452,326.06

Year	Sales	Acres	Received
Carried forward	135	24,828.690	\$1,452,326.06
1931	6	23.684	8,698.00
1932	2	14.884	4,988.00
1933	None	None	None
1934	None	None	None
1935	1	3.440	831.00
1936	1	16.417	4,100.00
1937	None	None	None
1938	1	2.121	1,500.00
1939	1	Lots	1,800.00
1940	None	None	None
	<hr/> 147	<hr/> 24,889.236	<hr/> \$1,474,243.06

The effect of the depression was such that while by the end of 1930 over 90 per cent of the acreage, viz., 24,828 acres, had been sold for \$1,452,326.06, during the next ten years 60 acres only were sold for \$21,917.00. There would have been no sales in 1935, 1938, 1939, 1940 and 1942 were it not that the land that was sold was required for rights-of-way for public purposes.

O. K. CUSHING,
EUSTACE CULLINAN,
DELGER TROWBRIDGE,
Counsel for Petitioners.

J. P. WENCHEL, GM.
Chief Counsel, Commissioner
of Internal Revenue.

[Endorsed]: Filed July 10, 1945. [241]

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

Stipulated that the items shown upon Exhibit "E" may be summarized as follows:

1. The following items are values set up for depreciation purposes only and are not expenditures.

Frame warehouse	\$10,000.00	
Frame buildings	20,000.00	
Wells	5,333.25	\$35,333.25

2. Expenditures: On pumping plants (including wells, motors and power lines) \$37,903.55

Repairing and rebuilding tank frames and tanks.....	602.44	
Houses, roofs and repairs.....	2,420.00	
Sheds	981.70	
Ditches	1,031.38	5,035.52

Fences		\$ 1,392.29
Concrete pine line.....	981.04	
Surface pipe	1,646.84	2,627.88

Horses		400.00
Miscellaneous		653.32

\$48,012.56

Of the sum of \$37,903.55, \$8,267.63 represents expenditures on pumping plants, including wells, that were on the premises when purchased from Miller & Lux, Incorporated.

Wells were acquired and disposed of as follows:

Item	Number	Sold	Oper- ating Dry Hole	Worth- less
On land when purchased.....	9	8	1	----
Drilled after purchase.....	20	5	12	3
Drilled by purchasers and ac- quired by foreclosure.....	3	2	----	----
Drilled by tenant.....	1	1	----	----
	—	—	—	—
	33	16	13	3
				1

Copies of the account in the form shown by Exhibit 11 were distributed to the investors from time to time generally but not always bimonthly.

/s/ O. K. CUSHING,

/s/ EUSTACE CULLINAN,

/s/ DELGER TROWBRIDGE.

Counsel for Petitioners.

/s/ J. P. WENCHEL,

TMM

Chief Counsel, Bureau of

Internal Revenue,

Counsel for Respondent.

[Endorsed]: Filed July 20, 1945. [243]

[Title of Tax Court and Cause.]

MEMORANDUM FINDINGS OF FACT AND OPINION

Harron, Judge:

A partnership income tax return was filed for Bloomfield Ranch for the year 1940. The respondent has held that Bloomfield Ranch is an association as defined in section 3797(a)(3) of the Code, and that it is therefore taxable as a corporation. That determination has resulted in a deficiency in income tax and declared value excess profits tax for the year 1940 in the respective amounts of \$6,646.60 and \$4,159.58. The general question is whether Bloomfield Ranch is an association taxable as a corporation.

The partnership return was filed with the collector for the first district of California. [244]

The record consists of stipulations of fact, testimony and exhibits.

Findings of Fact

The stipulations of fact are adopted as part of the findings of fact, and are incorporated herein by reference.

The petition in this proceeding is filed under the name of Bloomfield Ranch by James A. Clayton & Co., and others, who describe themselves as partners and co-owners of "Bloomfield Ranch."

The issue relates to real estate, later referred to as Bloomfield, located in California, in the counties of Santa Clara, San Benito, and Santa Cruz, com-

prising 21 separate parcels of land, which were owned, originally, by a corporation named Miller & Lux, Inc. The 21 parcels of land contained about 27,500 acres, which were suitable for various agricultural purposes, of which some parts were river bottoms, forest lands, swamp and overflowed lands, land in roads; and 42 acres were located in the city of Gilroy. The tracts were widely scattered; and the distance from north to south was about 14 miles; and, from east to west, about 13 miles. Miller & Lux had operated the properties as one going concern for raising cattle and feed, and for conducting some farming operations. Thousands of heads of cattle were handled, and as many as 200 men were employed, at times, to attend to the cattle.

The properties above described were sold on March 10, 1926, under the following arrangements:

The president of James A. Clayton & Co., hereinafter called Clayton Company, induced thirteen customers of the company to join with the company in the purchase of the above described properties. Clayton Company, a California corporation, has been engaged in the business of real estate [245] agent and broker since 1903. Clayton Company and thirteen individuals advanced \$50,000, each, or a total of \$700,000 cash. They formed what they called a "syndicate." The only "agreement" of the parties was represented by fourteen separate written instruments, identical in terms, which were signed by Clayton Company, designated as "Operator"; and each person who contributed to the fund of \$700,000,

designated as "Investor." The agreement, comprised of the fourteen separate instruments, acknowledged receipt of \$50,000 by the Operator for the purposes and upon the terms stated.

The purposes and terms set forth in the instruments of agreement, which are incorporated herein by reference, are briefly as follows:

1. The Operator, Clayton Company, was to use the entire fund contributed by the Investors, and other funds borrowed by the Operator, to purchase the several tracts of land, comprising about 27,000 acres, from Miller & Lux. Titles were to be held in the name of an employee of Clayton Company, M. E. Thomas. However, it was provided that titles could be held in the name of Clayton Company, or of any person, corporation, or concern, and that the Operator could have titles conveyed to other persons, corporations, or concerns in trust for the fourteen Investors. The purpose was for "the profitable resale" of the lands.

2. The Operator was empowered to "sell, convey, hold, lease for one season only, or in any otherwise deal with and treat said properties as the sole and absolute owner thereof in fee simple, and without let or hindrance from the Investor, or any of the Investors, less than the full number thereof," but it could not "exchange, encumber, nor lease except as above specified, nor sell the tres, wood or improve-

ments off from said property without the consent of the Investors." The Operator could incur costs and expenses in connection with "acquiring, holding, renting, selling, or protecting of said properties" as it should deem proper.

3. The Operator was authorized to use the moneys received from "sales or renting or other sources of said properties," for the payment, first, of a commission of 5 per cent to itself on the gross selling prices of each parcel sold; and for the payment of all costs, expenses, and charges paid or incurred by the Operator in the premises; and for the repayment of all moneys borrowed, together with interest.

4. Each Investor was entitled to have returned to him the \$50,000 which he advanced, in whole or in part, in the Operator's judgment, but no Investor was entitled to receive repayment of his contribution before the properties had been converted into cash and all charges and expenses had been fully paid. When all the properties are sold and all debts paid, the Operator shall pay the net proceeds to the Investors, in equal shares to each of them, their heirs and assigns. It was provided that distributions could be made in equal amounts to each Investor whenever the Operator had a net amount, after payment of charges, of \$7,000 or more on hand.

5. It was agreed that the Operator should receive a commission of \$50,000 for negotiating and consummating the purchase of the properties from Miller & Lux, in addition to the 5 per cent commissions on resales.

6. Each Investor is entitled to have an accounting rendered to him, but not oftener than once each 60 days.

7. The agreement of each Investor is binding upon his successors, heirs, representatives, and assigns.

On March 10, 1926, Clayton Company paid Miller & Lux \$1,235,000 for the several parcels of land, which were known as "Bloomfield," and which are referred to hereinafter as Bloomfield, for convenience. Clayton Company borrowed \$585,000, which with the \$700,000 of the Investors made up \$1,285,000, the purchase price plus the Operator's \$50,000 commission. Titles were taken in the name of M. E. Thomas, an employee of Clayton Company; notes were signed by her; and deeds of trust were given to two concerns which loaned the borrowed money.

When the lands were acquired from Miller & Lux, there were leases existing which had been made by Miller & Lux, and the land was taken over subject to the leases. They yielded rents of \$34,041 in 1926. [247]

During a five year period, 1926 to 1930, inclusive, 90 per cent of the property, about 24,828 acres, were sold for the total sum of \$1,452,326. The loans from

Miller & Lux and the Bank were paid by the end of 1927. At the end of 1930, there remained 2,672 acres, unsold.

The depression following the "crash" of October, 1929, depressed the real estate market, generally, and the sales of the property in question fell off after 1930. During ten years, from 1930 to 1940, inclusive, the only sales were sales of 60 acres for rights of way for public services, and but for such sales, no sales would have been made in 1935, 1938, 1939, 1940, and 1942. From 1941 to 1944, 1,112 acres were sold for \$541,843, most of the sales being made in 1944. At the end of 1944, 1,500 acres remained unsold.

The 42 acres in the town of Gilroy were sold in parcels making up a city block. There was never any intention of subdividing this acreage into lots, and the Operator refused to sell land in units of less than one block.

From the beginning, in 1926, Clayton Company adopted a policy of renting parcels of the acreage under leases to run for one year, subject to renewal for another year; and of keeping some of the acreage under cultivation in wheat or barley, until parcels were sold. When lands were sold, tenants were moved to other locations. The reasons for renting and cultivating the acreage, pending sales, were two-fold: To carry the taxes on the property and to keep the property from going "native," i.e., becoming over-grown with weeds and brush. The Operator paid himself a commission for renting lands. Income from farming and renting was [248]

accounted for separately on tax returns. Farming operations were carried on at a loss except in 1930, 1931, and 1934.

From 1926 through 1940, the operations of Clayton Company consisted of farming, renting, and selling property; collecting rents and payments of principal and interest on installment sales; paying taxes; disposing of produce raised on farms; and, in general, taking care of the financial and accounting aspects of the venture.

During the 15-year period, 1926 through 1940, receipts of interest totalled \$156,402.85; profits from sales totalled \$311,766.93; gross receipts from rents totalled \$456,062.91; and miscellaneous receipts totalled \$19,533.97. The total of taxes for the same period was \$224,722.76.

Sales to and including 1940 totalled \$1,474,243.06. Sales during 1941 to 1944, inclusive, totalled \$352,600. The total gain over the cost of the properties, \$1,285,000, aggregates \$541,843.06.

Distributions totalling \$98,250 have been made to each holder of the fourteen units, totalling \$1,375,500, which represents return of the original \$700,000 capital plus profits from all operations.

When all the acreage was purchased in 1926, Miller & Lux had put in nine wells and nine pumping units for pumping water. After 1931, when Clayton & Co., and some tenants, turned to truck farming, wet farming; and when dry years reduced the level of water in the ground, Clayton & Co. put in some wells and pumps, and made some repairs to existing wells and pumps, at a total cost of

\$37,903, of which sum \$8,267 was spent on the Miller & Lux wells and pumps. [249]

There have not been any exchanges of the Bloomfield property, nor reinvestments in other property.

Frazier O. Reed, president of Clayton Company, managed the operations. He discussed progress with the Investors when he saw them, individually. He called them all together to meet on three occasions to discuss income tax problems.

There were originally fourteen Investors and each had a one-fourteenth interest in the venture. Since 1926, changes have occurred in the Investors' interests due to deaths, transfers, and sales of all or part of a one-fourteenth interest, so that there are now nineteen Investors holding the original fourteen interests, some holding less than a one-fourteenth's interest, and some holding a complete one-fourteenth interest plus part of another one-fourteenth interest.

Whenever any changes in interest were made, Clayton Company was notified and made formal acknowledgment and record of the change in interests. The original agreement of each Investor had attached to it endorsement of any assignment or transfer of all or part of a one-fourteenth interest which showed how the transfer of interest came about or was made.

The Bloomfield Ranch Syndicate is an association taxable as a corporation. [250]

Opinion

The only question is whether Clayton Company and certain individuals constitute an association within the definition contained in section 3797(a) of the Internal Revenue Code, so as to constitute a taxable entity, taxable as a corporation as respondent has determined. The taxable year is 1940. There are nineteen petitioners in this proceeding.

Petitioner relies chiefly upon *Commissioner v. Gerstle*, 95 Fed. (2d) 587.

The question must be decided upon the particular facts of this case.

Upon careful examination of the evidence, it is concluded that those who made up a fund of \$700,000 for the purchase of the Miller & Lux property constituted an association, and that respondent has correctly determined that there was an association taxable as a corporation. The question is controlled by *Morrissey v. Commissioner*, 296 U. S. 344; *Helvering v. Combs*, 296 U. S. 365; *Huron River Syndicate*, 44 B.T.A. 859; *Helm & Smith Syndicate v. Commissioner*, 136 Fed. (2d) 440; *Bing & Bing, Inc.*, 35 B.T.A. 1170; *Kilgallon v. Commissioner*, 96 Fed. (2d) 337; cert. denied 305 U. S. 622.

Petitioners contend that the Bloomfield venture was a liquidation operation. On this point, we are required by *Morrissey v. Commissioner*, *supra*, to look to the terms of the agreement of the parties and petitioners are not at liberty to say that they had a narrower or different purpose. *Title Insurance & Trust Company v. Commissioner*, 100 Fed.

(2d) 482, 485. All of the parties agreed that about 27,000 acres of land were to be acquired and held for resale. The parties pooled their funds for the purpose of acquiring the property and reselling it at a profit. The purpose was stated to be "profitable resale." One member of the group was made the "Operator," or manager. It was given power to sell, convey, hold, and lease for one season, the properties, and to deal with the properties as though it was the sole owner; and to incur expenses in connection with the acquiring, holding, renting, selling, or protecting the properties as it should deem proper.

The acquisition of property for the express purpose of resale at a profit is a business undertaking. *G. F. Sloan, et al.*, 24 B.T.A. 61; *aff'd.*, 63 Fed. (2d) 666; *Adelaide Park Land*, 25 B.T.A. 211; *Bing & Bing, Inc.*, *supra*. The acreage acquired was large and of varied character, most of it being raw country land suitable for ranching and farming, and 42 acres being city property. In good times, comparatively speaking, as the record shows, an operation of reselling such extensive holdings could not be carried out quickly, but would require several years. The record shows that it required five years to sell the major part of the property when the real estate market was good. While the petitioners contend that the original purpose was the immediate resale of the property, thus seeking to bring the question at issue, within the holding of the *Gerstle* case, the contention is not supported by the facts or the terms of the agreements. Such a large

undertaking is not to be compared to that which was involved in the Gerstle case. Furthermore, the purpose was stated in the agreements to be the “profitable resale” of the properties [emphasis supplied], and there was no provision made about any time within which such purpose was to be carried out. Also, the agreements contemplated that the Operator could hold the property and could rent it for one-year terms during periods of holding. All that it was necessary to do constituted the conduct of a business for profit. It was necessary to negotiate many leases to rent portions of the land during the periods of holding; it was necessary to negotiate many sales and make many conveyances to resell the entire acreage; it was necessary to collect payments of principal and interest on installment sales contracts over periods of years. Clearly, the purpose was to make profits by dealing in real estate. We so conclude from the evidence. Clearly, the venture was not a mere liquidating undertaking. See *Morrissey v. Commissioner*, *supra*. See *United States v. Rayburn, et al.*, 91 Fed. (2d) 162.

In *Morrissey v. Commissioner*, *supra*, the Supreme Court stated that the distinguishing characteristic of an “association” is that it is “created to enable the participants to carry on a business and divide gains which accrue from their common undertaking”; and that the term “association” implies associates entering into a joint enterprise for the transaction of business. We have here such association of persons for the transaction of business. Petitioners contend otherwise, arguing that

each Investor, separately, was a principal, and Clayton Company was his agent. But we regard the argument as unsound. Although there was no single agreement, in form, each instrument contained identical terms and referred to the "thirteen other persons," the "Investors" who contributed "other sums"; and each instrument provided that Clayton Company was to use all of the sums contributed by all the Investors to purchase lands from Miller & Lux. Also, no Investor was entitled as a matter of right to receive any return or repayment of his contribution until all the properties were sold and all the debts paid; and all Investors were to share equally in the distributions [253] whenever they were made. It must be concluded that the fourteen instruments constituted a single agreement.

The undertaking was large; it required \$700,000 cash; it involved the purchase and resale of unusually large acreage of land. The venture was one which required associates. It was one, for example, that Clayton Company did not care to undertake alone. Under the name of "syndicate" Clayton Company, itself a member, brought into association thirteen others to enable all of the participants to carry on a venture of dealing in real estate and sharing the net profits accruing from the acquiring, holding, renting, and selling of the property. It is concluded that petitioners constituted an association. *Morrissey v. Commissioner*, *supra*. The facts show that the Bloomfield or Miller & Lux syndicate was substantially the same as the Car barn Syndicate in *Bing & Bing, Inc.*, *supra*.

Petitioners contend that they were owners of undivided equitable interests in real property, who had appointed an agent to sell the property, and that while titles were taken in the name of M. E. Thomas, she was only a trustee of a resulting trust. Petitioners admit that there was no express trust. This argument is unsound and it is answered by the terms of the fourteen instruments constituting the agreement of the parties. The instruments provided that titles to property were to be taken and held by the Operator in the name of M. E. Thomas, but that the Operator could have the titles conveyed to other persons, corporations or concerns, "or otherwise conveyed or held, as the Operator may desire, in trust for the said fourteen Investors." Titles were originally taken and held by the Operator in the name of M. E. Thomas, and no change was ever [254] made. The titles were not held by M. E. Thomas in trust. Furthermore, the fourteen Investors were not given any undivided interests in the realty which was purchased. They were given only the right to receive "moneys remaining in the Operator's hands" after paying all costs, obligations, and expenses; they were given the right only to have returned to them, at the same time, in equal amounts, the whole or part of the sum receipted for in each instrument; and no Investor was entitled, "as of right," to any payment or return "before said properties and the proceeds thereof have been converted into cash," and all expenses, debts, charges, and commissions had been fully paid. From the terms of the instruments it must

be concluded that the interests of the Investors were limited to rights to receive distribution of the net profits to be derived from the operation and sales of the land; and that their beneficial interests were only personal claims against the Operator; and that the Investors did not have interests in the land itself. See *Huron River Syndicate*, *supra*. The nature of interests of the Investors serves to distinguish this case from the *Gerstle* case where it was held that individuals were joint ventures, and the Circuit Court concluded that they were "equitable owners of the property acquired, and that their beneficial interests were not merely personal claims against the syndicate managers." See *Kilgallon v. Commissioner*, *supra*. It appears that petitioners advance the argument here that Clayton Company was a trustee-manager for each Investor. If they do, we must hold in this case, as was held in the *Kilgallon* case, that "the trustee-manager devise by the persons who were financially interested in the venture, constituted an 'association' which was taxable as a corporation * * *." [255]

There remains for consideration the point of the resemblance of the syndicate in question to the corporate form. Of the five salient characteristics of an association taxable as a corporation which are set forth in *Morrissey v. Commissioner*, *supra*, the following are found present here: Title to the properties was taken by the Operator, Clayton Company, for the benefit of the enterprise. The Operator was a corporation, and hence, its life was continuous. It took title to the properties in the name of one

of its employees; it had the power to have the title conveyed to any other person, corporation, or concern. Thus there was provision for a successor for the purpose of holding the titles. Management and control were centralized in Clayton Company. The death of the individual participants would not and did not cause any change in the constitution of the venture. Accordingly, the analogy to a corporate form of organization is found here in the terms of the agreements which provide for centralized management and the continuity in existence of the venture "secure from termination or interruption by death of owners of beneficial interests." The ownership of the beneficial interests was evidenced by the fourteen instruments and each instrument was binding on successors, heirs, representatives, and assigns. Transfers of entire interests and parts of interests were actually made by sales and assignments; and upon the deaths of some of the original Investors, their interests passed to their heirs, some of whom are petitioners in this proceeding. These transfers and deaths did not affect the continuity of the enterprise. Respondent contends that although limited liability was not expressly provided for in the agreements, liability was in fact limited to the \$50,000 investment which each Investor originally made in the enterprise. [256] Respondent's argument has much merit, and the provisions of the instruments are such that it is difficult to understand how the Investors could incur any liability to third parties dealing with the Operator, Clayton Company. However, absence of this single feature

is "insufficient to remove the taxpayer from the corporate class." *Jordan Creek Placers*, 43 B.T.A. 131, 135; *Huron River Syndicate*, *supra*; *Del Mar Addition*, 40 B.T.A. 833; *Bert v. Helvering*, 92 Fed. (2) 491.

We find that the major and important features set out in *Morrissey v. Commissioner*, *supra*, are present here, and conclude that the resemblance of the syndicate to the corporate form is sufficiently substantial to warrant its taxation as a corporation.

It is held that the petitioners representing Bloomfield Syndicate are an association taxable as a corporation. Respondent's determination is sustained.

Decision will be entered for the respondent.

Entered Jan. 31, 1947.

[Seal] [257]

The Tax Court of the United States

Washington

Docket No. 5007

BLOOMFIELD RANCH, et al.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, entered January 31, 1947, it is

Ordered and Decided: That there are deficiencies

in income tax and declared value excess profits tax for the year 1940 in the respective amounts of \$6,646.60 and \$4,159.58.

Entered Jan. 31, 1947.

[Seal] /s/ MARION J. HARRON,
Judge. [258]

[Title of Tax Court and Cause.]

STIPULATION

Whereas, Estate of Samuel Weinstein, deceased, by Ellen Weinstein, as Executrix of the will of Samuel Weinstein, deceased, was one of the petitioners in the above-entitled cause, and said Ellen Weinstein died on August 15, 1946, while said cause was under submission before the Tax Court, and Ellen Weinstein succeeded to the interest of Samuel Weinstein in the matter involved [259] in the above-entitled cause, as appears by the decree of distribution in the Matter of the Estate of Samuel Weinstein, deceased, a certified copy whereof is hereunto annexed; and Wells Fargo Bank & Union Trust Co. has been appointed Executor of the Will of Ellen Weinstein, deceased, as appears by the Letters Testamentary in the Matter of the Estate of Ellen Weinstein, deceased, a certified copy whereof is hereunto annexed;

It Is Stipulated that Wells Fargo Bank & Union Trust Co., as Executor of the will of Ellen Wein-

stein, deceased, may be substituted in the above-entitled cause as a petitioner, in the place of Estate of Samuel Weinstein, deceased, by Ellen Weinstein, as Executrix of the will of Samuel Weinstein, deceased.

/s/ O. K. CUSHING,
/s/ EUSTACE CULLINAN,
/s/ DELGER TROWBRIDGE,
Counsel for Petitioners.

J. P. WENCHEL, LAM
Counsel for Commissioner.

So ordered:

Judge.

Dated: [260]

The annexed instrument is a correct copy of the original on file in my office.

Attest:

Certified Mar. 28, 1947.

[Seal] ROBERT MUNSON,
County Clerk of San Francisco, and Ex-officio Clerk
of the Superior Court of the State of California,
in and for the City and County of San
Francisco.

By J. V. FARLEY,
Deputy.

In the Superior Court of the State of California
in and for the City and County of San Francisco

No. 79877

Dept. 9

In the Matter of the Estate of
SAMUEL WEINSTEIN,

Deceased.

H. W. Steinegger, 275 Bush Street, San
Francisco, SUTTER 3500, Attorney for Execu-
trix.

DECREE OF FINAL DISTRIBUTION

The petition of Ellen Weinstein, as Executrix of the Last Will and Testament of Samuel Weinstein, deceased, for final distribution, coming on regularly this day to be heard, and said Executrix being represented in court by her attorney, oral and documentary evidence having been introduced, and it appearing therefrom:

That notice as required by law has been duly and regularly given of the hearing of said petition; and

That Samuel Weinstein died testate in the City and County of San Francisco, on the 26th day of September, 1938, and was at the time of his death a resident of said City, [261] County and State and left therein an estate consisting of personal property; and

That Ellen Weinstein was named in the Last Will and Testament of said decedent to serve as Executrix thereof without bond and was after pro-

ceedings duly had for that purpose on the 30th day of November, 1938, appointed Executrix of the Last Will and Testament of said decedent, and forthwith qualified as such, and ever since has been and now is the duly appointed, qualified and acting Executrix of the Last Will and Testament of said decedent; and

That thereafter and at the time required by law, notice was given to the creditors of said decedent and of said estate and an affidavit showing due publication of said notice in "The Recorder," which said affidavit contains a copy of the notice and states the date of its first publication, has heretofore been filed with the Clerk of the Court within thirty days after the completion of the publication, to wit: on December 30, 1938, and said notice has been duly and regularly given; and

That thereafter the property of said decedent was appraised as required by law and an inventory and appraisement thereof filed by said Executrix showing the value of the property on September 26, 1938, to be the sum of \$43,500.00; and

That more than six months have elapsed since the first publication of notice to creditors of said decedent and of said estate and that all claims which have been presented against [262] said estate, and all debts of said estate, including United States, State, City, County and other taxes payable by said estate and said Executrix, including attorney fees to Stern & Grupp have been paid; that there is no collateral inheritance tax due the State of California herein, and that said estate is in a condition for final distribution; and

That by the terms of the Last Will and Testament of said decedent, any and all property of which decedent died seized or possessed is to be distributed to Ellen Weinstein, the widow of said decedent; and

That Ellen Weinstein, as the sole legatee under the Will of said decedent, has waived the rendering of any and all accounts whatsoever, and has waived all claims to commissions as Executrix herein, and that Ellen Weinstein, as such Executrix, has agreed to pay to H. W. Steinegger, the present attorney for said Executrix and Estate, the sum of Five Hundred Dollars (\$500.00) for services rendered to said Executrix and to said Estate; and

The matter having been submitted to the Court and the Court being fully advised in the premises;

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed:

(1) That notice as required by law has been given of the hearing of the petition for final distribution herein; [262]

(2) That notice as required by law has been given to the creditors of said decedent and of said estate;

(3) That all claims which have been presented against said estate, and all debts of said estate and all taxes and other payments required to be made by said decedent or said estate to the United States, State of California, City and County of San Francisco, or to any other governmental or political subdivision, including attorney fees to Stern & Grupp,

the former attorneys for said Executrix of said estate, have been paid; that there is no collateral inheritance tax due the State of California herein;

(4) That Ellen Weinstein, as the sole legatee under the Will of said decedent, has waived the rendering of any and all accounts whatsoever;

(5) That Ellen Weinstein, as Executrix of the Last Will and Testament of said decedent, has waived all claims to commissions as Executrix herein;

(6) That H. W. Steinegger is entitled to a fee of Five Hundred Dollars (\$500.00) for services rendered as attorney for said Executrix and said Estate, and that said fee is hereby allowed to said attorney, and said Executrix is hereby authorized and directed to pay to said H. W. Steinegger the sum of Five Hundred Dollars (\$500.00) as attorney's fees herein;

(7) That the property of said estate is hereby distributed [264] as follows:

To Ellen Weinstein:

All cash on hand;

A one-fourteenth ($1/14$) interest in the Bloomfield Ranch Syndicate, the legal title of the properties of which stands in the name of M. E. Thomas;

All other property of every kind and nature and wheresoever situate belonging to said decedent or said estate or of which said decedent died seized, which is not herein specifically described, whether or not now known or discovered.

It Is Further Ordered, Adjudged and Decreed that said Executrix, Ellen Weinstein, shall upon the filing of a receipt herein executed by the legatee and distributee hereunder be discharged from all further duty, obligation or liability as Executrix of the Last Will and Testament of said decedent.

Done in open court this 19th day of November, 1945.

/s/ T. I. FITZPATRICK,

Judge of the Superior Court.

Filed Nov. 18, 1945. H. A. van der Zee, Clerk;
by (signed) J. V. Farley.

Recorded: Vol. 1139, Page 393. April 20, 1946.
H. A. van der Zee, Clerk; by C. D. Carroll, Deputy
Clerk. [265]

The annexed instrument is a correct copy of the original on file in my office.

Attest:

Certified March 28, 1947.

[Seal]

ROBERT MUNSON,

County Clerk of San Francisco and ex-officio Clerk
of the Superior Court of the State of California,
in and for the City and County of San
Francisco.

By J. V. FARLEY,

Deputy.

In the Superior Court of the City and County of
San Francisco, State of California, Probate

Dept. No. 9

Probate No. 104330

In the Matter of the Estate

of

ELLEN WEINSTEIN,

Deceased.

LETTERS TESTAMENTARY—DUPLICATE

State of California,

City and County of San Francisco—ss.

The Last Will of Ellen Weinstein, Deceased, having been proved in the Superior Court of the City and County of San Francisco, State of California, Wells Fargo Bank & Union Trust Co., (a corporation), successor to Union Trust Company of San Francisco, which is named therein as such is hereby appointed [266] Executor.

Witness H. A. van der Zee, Clerk of the Superior Court of the City and County of San Francisco, State of California, with the Seal of said Court affixed, this 13th day of September, 1946. By Order of the Court.

[Seal]

H. A. VAN DER ZEE,

Clerk.

By J. V. FARLEY,
Deputy Clerk.

State of California,
City and County of San Francisco—ss.

Brian E. Gagan being duly sworn deposes and says, I am an officer, to-wit, the Trust Officer of Wells Fargo Bank & Union Trust Co., the corporation above-named, and am authorized to make and subscribe oaths on its behalf.

I do solemnly swear that said Wells Fargo Bank & Union Trust Co. will support the Constitution of the United States, and the Constitution of the State of California, and that it will faithfully perform the duties of Executor of the Last Will and Testament of Ellen Weinstein, Deceased, according to law.

BRIAN E. GAGAN.

Subscribed and sworn to before me this 13th day of September 13, 1946.

[Seal] AGNES M. COLE,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires August 27, 1947.

Filed: Sept. 13, 1946. H. A. van der Zee, Clerk,
J. V. Farley.

[Endorsed]: Received and filed March 31, 1947.

[Title of Tax Court and Cause.]

APPEARANCE

Ellen Weinstein, who, as Executrix of the Will of Samuel Weinstein, deceased, was a petitioner in the above-entitled cause, having died on August 15, 1946, and Wells Fargo Bank & Union Trust Co., having been duly appointed Executor of the Will of Ellen Weinstein, deceased, by the Superior Court of the State of California, in and for the City and County of San Francisco, and having been substituted in the above-entitled cause as a petitioner in the place of Estate of Samuel Weinstein, deceased, by Ellen Weinstein, as Executrix of the Will of Samuel Weinstein, deceased, Wells Fargo Bank & Union Trust Co., as Executor of the Will of Ellen Weinstein, deceased, hereby appears in the above-entitled cause as a petitioner pursuant to the said substitution.

/s/ O. K. CUSHING,

/s/ EUSTACE CULLINAN,

/s/ DELGER TROWBRIDGE,

Counsel for Petitioners on
Review.

[Endorsed]: Received and filed March 31, 1947.

[Title of Tax Court and Cause.]

ORDER

Upon consideration of the stipulation filed in the above-entitled proceeding March 31, 1947, and it appearing therefrom that Ellen Weinstein is deceased and that in the Estate of Samuel Weinstein, an order of distribution was entered November 19, 1945, whereby Ellen Weinstein became entitled to any interest held by the Estate of Samuel Weinstein, deceased in the Bloomfield Ranch, it is

Ordered that the Estate of Ellen Weinstein, deceased, Wells Fargo Bank & Union Trust Co.. Executor, be and it is hereby substituted as the party petitioner in the above-entitled proceeding in the place and stead of the Estate of Samuel Weinstein, deceased, by Ellen Weinstein, Executrix.

[Seal] /s/ MARION J. HARRON,
Judge.

Dated: Washington, D. C., March 31, 1947.
VSM/evd [269]

In the United States Circuit Court of Appeals
For the Ninth Circuit

Tax Court of the United States, Docket No. 5007

BLOOMFIELD RANCH, et al.,
Petitioners on Review,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

PETITION FOR REVIEW

The petitioners above-named, hereinafter referred to as "Petitioners," hereby petition the United States Circuit Court of Appeals for the Ninth Circuit to review the decision [270] entered by the Tax Court of the United States on January 31, 1947, ordering and deciding that there are deficiencies in income tax and declared value excess-profits tax for the year 1940 in the respective amounts of \$6,646.60 and \$4,159.58. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code. The individual petitioners are residents of the State of California and the corporation petitioners are corporations each organized and existing under and by virtue of the laws of the State of California and each having its principal place of business in said state. The tax return for the year 1940 which is involved herein was made to the Collector of Internal Revenue for the First Collection District of California. The First Collection District of Cali-

ifornia is within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit and this review is sought in said Court.

Nature of Controversy

Petitioner James A. Clayton & Co., hereinafter called "Clayton," is a corporation engaged in and doing business as a real estate agent and broker at San Jose, California. Early in 1926 it learned that Miller & Lux, Inc., was willing to sell lands which it owned aggregating about 27,500 acres. Clayton presented to a number of its customers, each of whom was willing to appoint Clayton as his agent on a commission basis, the opportunity to buy and then sell those lands at a profit. During January and February, 1926, Clayton and thirteen [271] of its customers each contributed \$50,000 to be used, with other money to be borrowed, in the purchase of said lands. Each investor upon payment received a document signed by Clayton and the investor, dated March 10, 1926, which documents were identical except for the names of the respective investors. A copy of that document is annexed to petitioners' petition to the Tax Court as Exhibit 1. The lands were bought and paid for, and over 90% of them were sold by the end of 1930 when the depression made itself felt. Thereafter the sales were almost nominal, less than 61 acres having been sold from 1931 to 1940 inclusive. It was necessary for Clayton to lease or farm the land in order to maintain it in a salable condition during the depression.

A partnership return of income for the calendar

year 1940 was made to the Collector of Internal Revenue for the First Collection District of California by the petitioners herein under the name Bloomfield Ranch showing income thereof and the respective shares of the petitioners therein, similar in form to returns that had been filed and accepted each year since 1926. Under date of February 28, 1944, the Commissioner issued a ninety-day notice addressed to Bloomfield Ranch, which stated "You filed a return on Form 1065 as a partnership. It is held that you are an association as defined in Section 3797 (a) (3) of the Internal Revenue Code, and are therefore subject to tax as a corporation," and the Commissioner assessed deficiencies for the year 1940 of \$6,646.50 in income tax liability, and of \$4,159.58 in declared value excess-profits tax liability. [272]

The Tax Court has sustained the Commissioner's determination.

Respectfully,

/s/ O. K. CUSHING,

/s/ EUSTACE CULLINAN,

/s/ DELGER TROWBRIDGE,

Counsel for Petitioners.

[Endorsed]: Received and filed T.C.U.S April 21, 1947. [273]

In The Tax Court of the United States

Docket No. 5007

BLOOMFIELD RANCH, et al.,

Petitioners on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent on Review.

To the Commissioner of Internal Revenue, and to
J. P. Wenchell, Esq., Chief Counsel, Bureau of
Internal Revenue:

You Are Hereby Notified that the Petitioners
above-named did, on the 21st day of April, 1947,
file with the Clerk of the Tax Court of the United
States, at Washington, [274] D. C., a petition for
review by the United States Circuit Court of Ap-
peals for the Ninth Circuit of the decision of the
Tax Court heretofore rendered in the above-entitled
cause. A copy of the Petition for Review as filed is
hereto attached and served on you.

Dated: This 21st day of April, 1947.

/s/ O. K. CUSHING,

/s/ EUSTACE CULLINAN,

/s/ DELGER TROWBRIDGE,

Counsel for Petitioners on
Review.

Personal service of the above and foregoing
notice, together with a copy of the Petition for
Review, is hereby acknowledge this 21st day of
April, 1947.

/s/ J. P. WENCHEL, C.A.R.,

Counsel of Respondent on
Review. [275]

In the United States Circuit Court of Appeals
For the Ninth Circuit

T. C. Docket No. 5007

BLOOMFIELD RANCH, et al.,
Petitioners on Review,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

MOTION FOR TRANSMISSION OF
ORIGINAL EXHIBITS

Come now the parties to the above-entitled proceeding by their counsel of record, and

Averring that Petitioners' Exhibits 11 and 14 and Respondent's Exhibit E which were received in evidence in the official proceeding before the Tax Court of the United States, are documents which would be costly or difficult to reproduce or print; it is moved: [276]

1. That the originals of said Petitioners' Exhibits 11 and 14 and Respondent's Exhibit E, instead of being fully set forth in the transcript to be certified by the Clerk of the Tax Court of the United States to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, may be transmitted by the Clerk of the Tax Court to the Clerk of this Court, said exhibits, however,

to remain in the custody of the Clerk of the Tax Court until fifteen days prior to the hearing before this Court and, upon direction and at the expense of counsel for petitioners, to be then transmitted by the Clerk of the Tax Court to the Clerk of this Court.

2. That said exhibits need not be printed in the record on review herein but may be referred to by counsel in their respective briefs and on oral argument, or reproduced, in whole or in part, in an appendix to their respective briefs, and considered by the Court with the same force and effect as if included in the printed record on review.

3. That the Clerk of this Court be instructed to transmit to the Clerk of the Tax Court of the United States, Washington 25, D. C., a certified copy of the order entered herein to be by him incorporated in the transcript of record filed in this Court. [277]

Wherefore, it is prayed that this motion be granted.

/s/ EUSTACE CULLINAN,

/s/ DELGER TROWBRIDGE,

/s/ O. K. CUSHING.

Attorneys for Petitioners.

/s/ J. P. WENCHEL, C.A.R.,

Chief Counsel, Bureau of Internal Revenue.

/s/ SEWALL KEY, C.A.R.,

Acting Assistant Attorney General,

Attorneys for Respondent.

So Ordered:

WILLIAM DENMAN,
Senior United States Circuit
Judge.

A True Copy:

Attest: May 2, 1947.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk.

[Endorsed]: Filed T.C.U.S. May 7, 1947.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF RECORD, PROCEEDINGS
AND EVIDENCE TO BE CONTAINED IN
THE RECORD ON REVIEW

To the Clerk of the Tax Court of the United States:

You will please prepare, transmit and deliver the complete record and all the proceedings and evidence in the above-entitled cause to the [279] Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, viz., copies, and originals where noted, duly certified as correct, of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Ninth Circuit heretofore filed by the Petitioners above-named:

(1) Docket entries of all proceedings before the Tax Court.

(2) Pleadings before the Tax Court.

(a) Petition with Exhibit A (notice and statement of deficiency) annexed thereto.

(b) Answer.

(3) Transcript of the proceeding before the Tax Court on June 10, 1945.

(4) The following exhibits introduced in evidence before the Tax Court:

Petitioners' (Taxpayer's) Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10;

Exhibit 11 (originals of eight photostat sheets, see Record, page 60);

Exhibits 12 and 13; and

Exhibit 14 (original map, see Record, page 84);

Respondent's Exhibits A, B, C, F and D;

Exhibit E (original copy of tabulation, see Record, page 111).

(5) Stipulation of the parties as to certain facts, received at the trial. (See Record, pages 22 and 23).

(6) Stipulation of facts regarding items shown upon [280] Exhibit E. (Filed with Court Room Clerk July 22, 1945).

(7) Memorandum Findings of Fact and Opinion of the Tax Court.

(8) Decision of the Tax Court.

(9) Stipulation for substitution of Wells Fargo Bank & Union Trust Co., as executor of the Will of Ellen Weinstein, deceased, as petitioner in place of Estate of Samuel Weinstein, deceased, by Ellen Weinstein, as executrix of the Will of Samuel Weinstein, deceased.

(10) Appearance of Wells Fargo Bank & Union Trust Co., as executor of the Will of Ellen Weinstein, deceased.

(11) Order of Tax Court for substitution of Estate of Ellen Weinstein, deceased, Wells Fargo Bank & Union Trust Co., executor.

(12) Petition for review.

(13) Notice of filing petition for review and service of same.

(14) Designation of record, proceedings and evidence to be contained in the record on review.

Said transcript to be prepared, certified and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

/s/ EUSTACE CULLINAN,

/s/ DELGER TROWBRIDGE,

/s/ O. K. CUSHING,

Attorneys for Petitioners on
Review. [281]

Receipt of copy of the foregoing Designation of Record, Proceedings and Evidence to be Contained in the Record on Review is hereby admitted this 5th day of May, 1947.

/s/ J. P. WENCHEL, C.A.R.,

By

Counsel for Commissioner of
Internal Revenue,
Respondent on Review.

[Endorsed]: Received and filed T.C.U.S. April
28, 1947. [282]

The Tax Court of the United States
Washington 25, D. C.

Docket No. 5007

BLOOMFIELD RANCH, et al.,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

CERTIFICATE

I, Victor S. Mersch, clerk of the Tax Court of the United States, do hereby certify that the foregoing pages, 1 to 282, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 20th day of May, 1947.

[Seal] /s/ VICTOR S. MERSCH, EMT
Clerk, the Tax Court of the
United States.

[Endorsed]: No. 11643. United States Circuit Court of Appeals for the Ninth Circuit. Bloomfield Ranch, by James A. Clayton & Co., a Corporation, managing partner, operator and co-owner thereof, and by Florence G. Baldwin, John Derrol Chace, Willis Sherman Clayton, Jr., Arthur D. Curtner, John Kirk Dorrence, Ross L. Fitch, Margaret F. Coykendall, Hugh S. Hersman, Alfred A. Hapgood, George H. Osen, Alfred L. Parkinson, Estate of Andrew R. Patrick, deceased, by Sigurd C. P. Cornett, as executor of the Will of Andrew R. Patrick, deceased, San Jose Hardware Co., a Corporation, Nellie Shillingsburg, Anne Thompson, Sarah Shillingsburg Barry, Margaret Leaman, and Estate of Ellen Weinstein, deceased, by Wells Fargo Bank & Union Trust Co., Executor, substituted for Estate of Samuel Weinstein, deceased, by Ellen Weinstein, as Executrix of the Will of Samuel Weinstein, deceased, partners in and co-owners of Bloomfield Ranch, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Devision of the Tax Court of the United States.

Filed June 3, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 11643

BLOOMFIELD RANCH, et al.,

Petitioners on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

STATEMENT OF POINTS TO BE
RELIED UPON

Now come the Petitioners on Review in the above-entitled cause, by their attorneys, O. K. Cushing, Eustace Cullinan and Delger Trowbridge, and hereby state that they intend to rely upon the following points in this proceeding:

1. The Tax Court erred in failing to find that the petitioners do not constitute an association taxable as a corporation.

2. The Tax Court erred in finding that the Bloomfield Ranch Syndicate is an association taxable as a corporation.

3. The Tax Court erred in holding that there are deficiencies in income tax and declared value excess profits taxes for the year 1940 in the respective amounts of \$6,646.60 and \$4,159.58; and erred in failing to hold that there are no deficiencies in income tax or declared value excess profits taxes for the year 1940.

4. The Tax Court erred in failing to find that each person who paid \$50,000 to Clayton & Co. signed with Clayton & Co. a separate written instrument in the form of Petitioners' Exhibit 1, and that there was no other agreement by any petitioner.

5. The Tax Court erred in finding that the fourteen separate written instruments referred to in its Findings of Fact were signed by each person who contributed to the fund of \$700,000, designated as "Investor."

6. The Tax Court erred in failing to find that there was no agreement by the investors with one another.

7. The Tax Court erred in failing to find that the investors had no meeting before they signed the respective agreements with Clayton & Co. and that some of them did not know who the others were.

8. The Tax Court erred in finding that the agreement provided that "Each investor was entitled to have returned to him the \$50,000 which he advanced, in whole or in part, in the operator's judgment, but no investor was entitled to receive repayment of his contribution before the properties had been converted into cash and all charges and expenses had been fully paid."

9. The Tax Court erred in finding, with respect to said agreement "It was provided that distribution could be made in equal amounts to each investor whenever the operator had a net amount, after payment of charges, of \$7,000 or more on hand."

10. The Tax Court erred in failing to find, on

the contrary, that it was provided in the agreement between each investor and Clayton & Co. that upon the payment of the debts, taxes and charges accrued, any residue of money in the Operator's (Clayton & Co.) hands "shall be distributed equally to said investors whenever there shall be a net amount of \$7,000 or more on hand."

11. The Tax Court erred in failing to hold that such leases as were made and such expenses as were incurred with respect to the property after the year 1930, occurred as the result of the depression and were matters beyond the control of either the Operator or the investors.

12. The Tax Court erred in finding that from 1941 to 1944, 1112 acres were sold for \$541,843.00.

13. The Tax Court erred in finding that the original agreement of each investor had attached to it endorsement of any assignment or transfer of all or part of a one-fourteenth interest which showed how the transfer of the interest came about or was made.

14. The Tax Court erred in holding that the fourteen instruments which were signed by the respective investors constituted a single agreement.

15. The Tax Court erred in holding that the titles to the property were not taken and held by M. E. Thomas in trust for the respective investors.

16. The Tax Court erred in failing to hold that each respective investor was a principal and Clayton & Co. was his agent.

17. The Tax Court erred in holding that Clayton & Co. was given power to deal with the properties as though it was the sole owner, and the Tax Court

erred in failing to hold that the agreement provided in the same connection that the Operator (Clayton & Co.) "may not exchange, encumber, nor lease except as above specified, (for one season only), nor sell trees, wood or improvements off from said property without the consent of the investor."

18. The Tax Court erred in holding that the investors did not have undivided interests in the lands which were purchased, and erred in holding that the investors were not the equitable owners of undivided interests in the property acquired by the investment.

19. The Tax Court erred in failing to hold that the investors were equitable owners of the property acquired and that their beneficial interests were not merely personal claims against the agent, Clayton & Co.

20. The Tax Court erred in holding that the interests of the investors were limited to rights to receive distribution of the net profits to be derived from the operation and sales of the land, and that their beneficial interests were only personal claims against the operator.

21. The Tax Court erred in holding that no investor was entitled, "as of right," to any payment or return "before said property and the proceeds thereof have been converted into cash," and all expenses, debts, charges and commissions had been fully paid; and the Tax Court erred in failing to hold, with respect to the foregoing language, that the agreement also read "provided, however, that upon the payment of the debts, taxes and charges

accrued, such funds shall be distributed equally to said investors whenever there shall be a net amount of \$7,000 or more on hand.”

22. The Tax Court erred in holding that liability was limited to the investment which each investor originally made in the enterprise.

23. The Tax Court erred in failing to hold that the petitioners constituted a partnership as partnership is defined by Section 3797 of the Internal Revenue Code, and Section 29.3797-4 of Regulations 111 or Section 19.3797-4 of Regulations 103.

24. The Tax Court erred in holding that “the acquisition of property for the express purpose of resale at a profit is a business undertaking”; and the Tax Court erred in holding that the purpose of the investment involved in this case was to make profits by “dealing” in real estate.

25. The Tax Court erred in holding “that those who made up a fund of \$700,000 for the purchase of the Miller & Lux property constituted an association, and that respondent has correctly determined that there was an association taxable as a corporation.”

26. The Tax Court erred in failing to hold that those who invested in the purchase of the Miller & Lux property did not constitute an association.

27. The Tax Court erred in holding that the petitioners constitute an association within the definition contained in Section 3797(a) of the Internal Revenue Code, so as to constitute a taxable entity taxable as a corporation.

28. The Tax Court erred in failing to hold that the petitioners do not constitute an association

within the definition contained in Section 3797(a) of the Internal Revenue Code so as to constitute a taxable entity taxable as a corporation.

Petitioners designate the entire record, as certified by the Clerk of the Tax Court of the United States, as necessary for the consideration of the above-mentioned points, except, however, the photostatic copies of the agreements between the respective investors and James A. Clayton & Co., which are annexed to the copies of Petitioners' Exhibit 2 (record pages 192 and 193), Exhibit 3 (record pages 195 and 196), Exhibit 4 (record pages 198 and 199), Exhibit 5 (record pages 201 and 202), Exhibit 6 (record pages 209, 210, 211 and 212), and Exhibit 10 (record pages 218 and 219); each of which is identical with Petitioners' Exhibit 1 (record pages 189 and 190) except as to the name of the investor.

And petitioners request that the record be printed accordingly, and that in lieu of the said agreements, excepted as aforesaid, there be printed in the record a statement that each of said agreements so omitted from the printed record is identical with Petitioners' Exhibit 1 (record pages 189 and 190) except in each case the difference of the name of the investor.

Dated: June 5th, 1947.

/s/ O. K. CUSHING,

/s/ EUSTACE CULLINAN,

/s/ DELGER TROWBRIDGE,

Counsel for Petitioners on
Review.

[Endorsed]: Filed June 5, 1947.